

No. 11458

United States
Circuit Court of Appeals
For the Ninth Circuit.

PAUL W. SAMPSELL, L. BOTELER and
STEWART McKEE, Trustees of the Estate
of Christ's Church of the Golden Rule, a
corporation, bankrupt,

Appellants,

vs.

THEODORE M. MONELL,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

FILED

JAN 30 1947

PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Attorney for Appellee.

Decision by Hon. Michael J. Roche

In the District Court of the United States
Southern District of California
Central Division

No. 44,128-WM

In Bankruptcy

In the Matter of:

CHRIST'S CHURCH OF THE GOLDEN RULE,
a corporation,

Bankrupt.

ORDER APPOINTING ANCILLARY
RECEIVER

At San Francisco, State of California, in said District on the 26th day of November, 1945, upon the annexed petition of Christ's Church of The Golden Rule, a non-profit California corporation, praying for the appointment of an ancillary receiver to take charge of the property of said Bankrupt herein, the territorial limits of this court and it appearing that no notice of a hearing on said petition should be given, and that said Bankrupt has property within the territorial limits of this Court and good cause having been shown for the appointment of an ancillary receiver, it is,

Ordered, that Paul W. Sampsell and William C. Mikulich be and they hereby are appointed Ancillary Receivers to take charge of the property of Christ's Church of the Golden Rule, a non-profit California corporation, the Bankrupt above

named within the territorial limits of this Court; and it is further,

Ordered, that the duties and compensation of said Ancillary Receivers be and they hereby are enlarged pursuant to General Order 40, of the General Orders in Bankruptcy, adopted by the Supreme Court of the United States; and it is further,

Ordered, that within five (5) days after the entry of this order that said Paul W. Sampsell and William C. Mikulich shall qualify as such Ancillary Receivers by entering in into a joint bond to the United States in the sum of \$25,000.00 with such sureties as shall be approved by this Court, conditioned for the faithful performance of their official duties; and it is further,

Ordered that said Ancillary Receivers be and they are hereby ordered and directed to operate the properties of the bankrupt within the jurisdiction of the court until further order of the court; and it is further, [1*].

Ordered that the prayer of the petition be and it is hereby granted and Burton J. Wyman one of the referees in bankruptcy of this court is hereby designated and appointed referee before whom said ancillary proceedings shall be conducted.

MICHAEL J. ROCHE,
District Judge.

[Endorsed]: Filed Nov. 26, 1945. [2]

* Page numbering appearing at foot of page of original certified Transcript of Record.

[Title of District Court and Cause.]

PETITION FOR AN ORDER OF SALE
(DENTON SAWMILL)

Now come Paul W. Sampsell, L. Boteler and Stewart McKee, and respectfull represent:

I.

On November 1, 1945, the above-entitled proceeding was commenced in the above-entitled court by the above-named corporation under Chapter XI of the Bankruptcy Act, as amended, for an arrangement between the said corporation and its creditors. On November 15, 1945, in the same case, the said corporation filed its voluntary Petition in bankruptcy. Thereafter and on November 19, 1945, the said corporation was duly adjudicated a bankrupt upon said Petition, and further proceedings in the case were referred by the court to Benno M. Brink, a Referee in Bankruptcy thereof. On November 20, 1945, Paul W. Sampsell, J. Ray Files, and Stewart McKee were appointed and qualified by the court as primary receivers in bankruptcy of the estate of the said corporation. Thereafter they acted in that capacity until January 4, 1946. On January 4, 1946, Paul W. Sampsell, L. Boteler, and Stewart McKee [3] were appointed, with the approval of the court, and qualified by the court, as Trustees in Bankruptcy of the estate of the said corporation, and ever since have been and now are the duly appointed, qualified, and acting Trustees in Bankruptcy of the said estate.

II.

On November 26, 1945, upon the application of the said primary receivers in bankruptcy, ancillary proceedings in bankruptcy were commenced and thereafter prosecuted in the United States District for the Northern District of California. Thereafter and on November 26, 1945, the said District Court for Northern California appointed and qualified as ancillary receivers in bankruptcy for the Northern District of California, Paul W. Sampsell of Los Angeles and William C. Mikulich of San Francisco. Thereafter the said ancillary receivers in bankruptcy for the Northern District of California continued to act as such until 10:30 a.m. on Monday, February 18, 1946, when their duties as such ancillary receivers in bankruptcy, except to account to said District Court for the Northern District of California for their administration, were terminated, and they were superseded in office by said Trustees in Bankruptcy.

III.

Among the assets of the bankrupt estate is a sawmill located about ten miles northeast of Willits, California, comprising real estate, the machinery and equipment of said sawmill, and other personal property, purchased partly on contract from DeLancey Lewis and West Coast Redwood Corporation. Ever since July 27, 1945, and up to the time of bankruptcy, the bankrupt corporation operated the said real and personal property as a sawmill through William W. Denton as its trustee. On

November 1, 1945, when the bankruptcy proceedings were commenced, as aforesaid, the bankrupt corporation was the owner of, and in the actual possession of, the said real [4] and personal property, pursuant to contracts of sale from DeLancey Lewis and Doris B. Lewis, his wife, and West Coast Redwood Corporation. Since the commencement of the bankruptcy proceeding, the said sawmill has been operated under the jurisdiction of the bankruptcy court by the said William W. Denton for the benefit of the bankrupt estate.

IV.

The interest of the bankrupt estate in the said real and personal property has been appraised herein as approximately \$42,000.00. The balance due on the said contracts of sale is a little less than \$30,000.00. In order to realize this apparent equity in the said property it is necessary for the Trustees in Bankruptcy to sell the said property pursuant to the requirements of Section 47a(1) of the Bankruptcy Act.

V.

The said DeLancey Lewis and Doris B. Lewis, his wife, West Coast Redwood Corporation, and William W. Denton, claim some right, title, or interest in, or lien upon, the said property, or some part thereof, adverse to the said Trustees in Bankruptcy with respect to the equity in the said property. But any such claim or claims are without right or foundation and are subordinate to the

claims of the said Trustees in Bankruptcy to the said property.

VI.

The said real property is described as follows:

County of Mendocino

Parcel #1—Lot 2, Section 30, Township 19 North, Range 14 West, M. D. B & M.

Parcel #2—Southwest $\frac{1}{4}$ of Southeast $\frac{1}{4}$ of Section 10, Township 19 North, Range 14 West, M. D. B. & M.

Parcel #3—Beginning at the intersection of the center line of the County Road with the Southerly boundary line of Section 8, Township 19 North, Range 14 West, Mount Diablo Meridian, thence along said Southerly boundary line. easterly 739.5 feet to the quarter section corner common to said Section 8 and Section 17, Township 19 [5] North, Range 14 West, Mount Diablo Meridian; thence Northerly along the Easterly boundary of the Southwest quarter of said Section 8, 1,340 feet; thence North $86^{\circ} 41'$ East 235.2 feet; thence North $74^{\circ} 16'$ East 200 feet; thence North $67^{\circ} 01'$ East 200.0 feet; thence North $51^{\circ} 32'$ East 600.0 feet; thence North $44^{\circ} 05'$ East 200.0 feet; thence North $32^{\circ} 21'$ East 200 feet; thence North $12^{\circ} 40'$ East 158.8 feet; thence North $4^{\circ} 05'$ East 179.8 feet; then North $52^{\circ} 30'$ East 78.5 feet; thence South $27^{\circ} 59'$ East 267.7 feet; thence South $21^{\circ} 18'$ West 138.0 feet; thence South $15^{\circ} 18'$ West 296.1 feet; thence South $47^{\circ} 29'$ East 141.5 feet; thence South $3^{\circ} 18'$ East 409.0 feet; thence

South 25° 10' East 90.0 feet; thence South 10° 02' East 181.5 feet; then South 28° 20' East 214.5 feet; then South 24° 46' East 132.1 feet; thence South 51° 16' East 149.6 feet; thence South 51° 38' East 289.4 feet; thence South 72° 15' East 150.0 feet; thence South 78° 58' East 201.9 feet; thence South 77° 27' East 200.6 feet; thence South 80° 44' East 149.9 feet; thence South 60° 24' East 172.4 feet; thence South 10° 52' West 120.9 feet; thence South 33° 35' West 233.5 feet to a point from which the corner common to Section 8, 9, 16 and 17, Township 19 North, Range 14 West, Mount Diablo Meridian, bears West 225.3 feet; thence continuing South 33° 35' West 140.5 feet; thence South 36° 04' East 140.7 feet; thence South 1° 13' East 150.8 feet; thence South 20° 07' East 164.6 feet; thence South 24° 15' East 156.1 feet; thence South 21° 00' East 1395.0 feet; thence South 26° 30' East 940.0 feet; thence North 59° 21' West 2200.0 feet; thence North 66° 40' West 167.0 feet; thence North 69° 28' West 137.7 feet; thence North 82° 27' West 199.6 feet; thence North 85° 22' West 92.4 feet; thence North 61° 01' West 185.0 feet; thence North 56° 18' West 106.1 feet; thence North 49° 08' West 149.4 feet; thence North 51° 42' West 178.0 feet; thence North 68° 01' West 315.0 feet; thence North 52° 23' West 304.0 feet; thence North 80° 39' West 200.0 feet; thence North 86° 40' West 163.2 feet; thence North 74° 49' West 198.1 feet; thence North 85° 59' West 198.1 feet to a point in the center line of said County Road; thence, along said center line, North 30° 27' West 199.9 feet; thence North 28° 13' West 199.9

feet; thence North 32° 19' West 200.0 feet; thence North 19° 45' West 311.7 feet to the point of beginning containing 208 acres, more or less, exclusive of that portion included in said County Road.

Parcel #4—Northeast quarter of the Southeast quarter of Section 19, Township 19 North, Range 14 West, Mount Diablo Base and Meridian.

Parcel #5—Northeast quarter of the Northeast quarter of Section 19, Township 19 North, Range 14 West, Mount Diablo Base and Meridian.

Parcel #6—Southeast quarter of the Northeast quarter of Section 19, Township 19 North, Range 14 West, Mount Diablo Base and Meridian.

The said parcels #1, #2, and #3 above described are covered by a contract of sale made and entered into the 28th day [6] of February, 1944, by and between DeLancey Lewis and Doris B. Lewis, his wife, and William W. Denton and William H. James.

The said parcels #4, #5, and #6 above enumerated are not covered by said contract of sale and are independently owned by the said Trustees in Bankruptcy.

Wherefore, the said Trustees in Bankruptcy pray that: -

1. An Order issue herein directing the said DeLancey Lewis and Doris B. Lewis, his wife, West Coast Redwood Corporation, and William W. Denton, and each of them, to appear before the above-entitled court, at a time and place specified, then

and there to show cause, if any there be, why the said property should not be sold free and clear of liens and claims thereon, or subject to liens and claims thereon.

2. Upon the hearing of the said Order to Show Cause an Order be made herein in conformity herewith.

3. The Trustees in Bankruptcy be awarded the costs of this proceeding.

4. The Trustees in Bankruptcy be granted general relief.

Dated: This day of March, 1946.

IRVING M. WALKER,
GRAINGER AND HUNT,

By REUBEN G. HUNT,
Attorneys for Trustees. [7]

State of California,
County of Los Angeles—ss.

L. Boteler, being first duly sworn, deposes and says:

I am one of the Trustees named in the foregoing Petition and make this verification for and on behalf of all of the Trustees. I have read the foregoing Petition and know the contents thereof, and the same is true to the best of my knowledge, information, and belief.

/s/ L. BOTELETER,
Affiant.

Subscribed and sworn to before me this 28th day of March, 1946.

/s/ BESS A. ALDRICH,

Notary Public in and for said
County and State.

[Endorsed]: Filed March 29, 1946. Burton J. Wyman, Referee in bankruptcy.

[Endorsed]: Filed July 11, 1946. C. W. Calbreath, Clerk. [8]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE
(DENTON SAWMILL)

Upon consideration of the Petition filed herein by Paul W. Sampsell, L. Boteler, and Stewart McKee, Trustees in Bankruptcy of the estate of the above-named corporation, for an Order of Sale of the real and personal property referred to in the said Petition.

It Is Hereby Ordered that DeLancey Lewis, Doris B. Lewis, his wife, West Coast Redwood Corporation, and William W. Denton be, and each of them are, hereby required to appear before the undersigned Referee in Bankruptcy, at his courtroom on the Sixth Floor of the Grant Building, Seventh and Market Streets, San Francisco, California, on Monday, April 15, 1946, at 10:00 a.m., then and there to show cause, if any there be, why the said Petition should not be granted.

It Is Hereby Further Ordered that service of the said Petition or this Order to Show Cause shall be sufficient if copies [9] thereof are mailed to the said persons from either Los Angeles or San Francisco at least ten days prior to the date of such hearing.

It Is Hereby Further Ordered that any respondent desiring to plead, answer, or respond to the said Petition or the said Order to Show Cause shall serve and file such pleading, answer, or response at least five days prior to the date of such hearing.

Dated: This 30th day of March, 1946.

BURTON J. WYMAN,
Referee in Bankruptcy.

[Endorsed]: Filed April 1, 1946. Burton J. Wyman, Referee in Bankruptcy.

[Endorsed]: Filed July 11, 1946. C. W. Calbreath, Clerk. [10]

[Title of District Court and Cause.]

PETITION IN RECLAMATION

To the Honorable, Burton J. Wyman, Referee in Bankruptcy:

The petition of West Coast Redwood Corporation and DeLancey Lewis and Doris B. Lewis, his wife, respectfully shows:

I.

That West Coast Redwood Corporation, (here-

in after referred to as "Corporation"), is a corporation duly created, organized and existing under and by virtue of the laws of the State of California.

II.

That said corporation is and at all times herein mentioned, was the owner of that certain sawmill and equipment including saws, machinery and other necessary tools for use in connection with the operation of a mill located in Mendocino County, [11] California, about six miles east of Laytonville.

III.

That on or about March 22, 1944 said corporation, as seller, entered into a written agreement with William W. Denton and William H. James, as purchasers, wherein and whereby said purchasers did agree to purchase from said corporation all of said sawmill and equipment above mentioned for a total sum of fifty thousand (\$50,000) dollars; that by inadvertence said agreement excluded a provision therefrom which was understood and agreed between the parties hereto providing for the payment of the balance of the purchase price of fifty thousand (\$50,000) dollars not later than October 1, 1945 and that on or about April 6, 1944 said corporation executed an addendum to said agreement which was deposited with the Title Insurance and Guaranty Company in San Francisco with said original agreement on March 22, 1944, it being understood that the terms of said addendum were binding upon both parties to said agreement.

That said corporation is informed and believes that said addendum was in fact executed by said purchasers, and was accepted by them and that said addendum of April 6 and said agreement of March 22 constitute the agreement between the parties.

That thereafter said agreement as so modified by said addendum was assigned by said purchasers to Christ's Church of the Golden Rule, the above named bankrupt; that a copy of said agreement and said addendum are attached hereto and made a part hereof and marked "Exhibit A" and by this reference incorporated herein as fully and to the same effect as though at this point re-copied and set forth in haec verba and pleaded in legal effect.

IV.

That the said purchasers violated said agreement and defaulted in the terms thereof in the following respects: [12]

(a) That said purchasers failed to acquire from Union Lumber Company, as provided by Paragraph 12 of said agreement, the parcels of timber land under option, and allowed said option to expire, thereby materially damaging said corporation and the future operations of said mill;

(b) That said purchasers failed to make the payments in accordance with said agreement and the entire balance thereon amounting to \$27,366.70 together with interest thereon at the rate of four percent per annum from October 1, 1945 is due, owing and unpaid; that due demand and notice of said default were given to said purchasers and said

default has lasted for a period in excess of thirty days after said demand and notice.

V.

That in and by the terms and provisions of said agreement, and said purchasers did agree that in the event of any action being brought to enforce any of the terms of said agreement by either party, the prevailing party in such action should be entitled to reasonable attorney's fees to be fixed by the court and taxed as part of the costs of suit in such action; that said corporation alleges that a reasonable sum to be allowed as attorney's fees herein is the sum of three thousand (\$3,000.00) dollars.

VI.

That it is also provided by the terms of said agreement that the Lewis contract hereinafter mentioned should be assigned to said corporation as part of the consideration for the execution of said contract so that, in the event of any default of the purchasers under said Lewis contract, said corporation could protect its right by paying the balance due to said DeLancey Lewis and Doris B. Lewis, his wife, and acquire the property covered by said Lewis contract. [13]

VII.

That said purchasers assigned their interests under said contract aforesaid to said Christ's Church of the Golden Rule, the bankrupt herein, after the defaults hereinbefore mentioned occurred, and said bankrupt took said contracts subject to

said defaulted condition thereof and with knowledge of all of the foregoing matters herein alleged.

VIII.

That said agreements specifically provided that the purchaser should have no title to any of the property covered by said agreement until the full amount of the purchase price and interest should have been paid. Title was reserved in and retained by said corporation until full payment of said purchase price. That all payments made by said purchasers were, according to the terms of said agreement deemed to have been made by them as rental for said property in the event of any default thereunder.

That demand has heretofore been made on said bankrupt and the Trustees for said bankrupt for the payment of the balance due under said contract of the return of said property but they have refused and do now refuse to pay said balance or return said property.

IX.

That at all times herein mentioned said DeLancey Lewis and Doris B. Lewis, his wife, (hereinafter referred to as "Sellers"), were the owners of certain parcels of land described in that certain contract dated February 28, 1942 executed by said DeLancey Lewis and Doris B. Lewis, his wife, as first parties and sellers, and William H. Denton and William H. James as second parties, a copy of which contract is attached hereto and made a [14] part hereof and marked "Exhibit B" and by this

reference incorporated herein as fully and to the same extent as though at this point re-copied and set forth at length in *hæc verba* and pleaded in legal effect.

X.

That in and by the terms of said agreement said DeLancey Lewis and Doris B. Lewis, his wife, did agree to sell said property to said second parties named in said agreement for the sum of four thousand three hundred sixty (\$4360.00) dollars payable as therein provided. That said second parties defaulted in making the payments due under said contract and there is now due, owing and unpaid from said second parties to DeLancey Lewis and Doris B. Lewis, his wife, under said contract, and in accordance with the terms thereof, the sum of one thousand eight hundred and 61/100 (\$1811.61) dollars plus interest at the rate of six per cent per annum from August 15, 1945.

XI.

That said contract further provided that said second parties named therein should keep all the property insured for the benefit of the respective parties in insurance companies satisfactory to the sellers named therein; that said second parties failed to keep and maintain such insurance and said DeLancey Lewis and Doris B. Lewis, sellers, have been compelled to pay insurance premiums in the sum of one thousand eight hundred seven and 61/100 (\$1807.61) dollars, being necessary and reasonable insurance on said property, and also have

been forced to pay taxes on said property in the sum of one hundred twenty-eight and 88/100 (\$128.88) dollars which said second parties did agree to pay and which they failed to pay. [15]

XII.

That in and by the terms and provisions of said agreement it was specifically provided that the title to said property was to remain in and to be retained and reserved in sellers, until full payment of said purchase price and all sums due under said contract and that all additions and improvements to said property by second parties should immediately become and be the property of said sellers.

That demand has heretofore been made on said bankrupt and the Trustees for said bankrupt for the payment of the balance due under said contract or the return of said property but they have refused and do now refuse to pay said balance or return said property.

XIII.

That is is further provided in and by said contract that in the event of any action or proceeding being brought by either party to enforce any of the terms thereof, the prevailing party in such action should be entitled to reasonable attorney's fees to be fixed by the court and taxed as costs of suit in such action or proceeding.

XIV.

That said petitioners allege that the sum of five

hundred (\$500.00) dollars is a reasonable amount to be allowed as attorney's fee herein.

Wherefore, your petitioners pray that an order be made herein restoring to West Coast Redwood Corporation full and complete title of property covered by said contract aforesaid, together with all additions thereto and improvements thereof and that this court decree that said bankrupt has no interest or estate or claim therein or thereto or any part thereof or that said [16] bankrupt pay to said petitioners the full amount due under said contract together with interest thereon as hereinbefore alleged and for a further order restoring to DeLancey Lewis and Doris B. Lewis, his wife, full and complete title to the property being the subject of said real estate contract aforesaid, together with all improvements and additions thereto or that said bankrupt be directed to pay to said DeLancey Lewis and Doris B. Lewis, his wife, the said sum of one thousand eight hundred eleven and 61/100 (\$1811.61) plus interest at six per cent from August 15, 1945 together with the sum of one thousand eight hundred seven and 61/100 (\$1807.61) dollars covering said expenditures and that said bankrupt be further directed to pay the sum of three thousand five hundred (\$3500.00) as attorney's fees herein to be fixed as costs in this proceeding and for such other and further relief as may be meet and proper in the premises.

THEODORE M. MONELL,

Attorney for Petitioners. [17]

Northern District of California,
City and County of San Francisco—ss.

DeLancey Lewis, being first duly sworn deposes and says:

That he is one of the petitioners named in the foregoing petition in reclamation; that he has read said petition and knows the contents thereof, and that the same is true of his own knowledge, excepting as to those matters therein set forth upon information and belief, and as to those matters that he believes it to be true.

DeLANCEY LEWIS

Subscribed and sworn to before me this 2nd day of April, 1946.

[Seal]

JANE M. DOUGHERTY,
Notary Public in and for the City and County of
San Francisco. [18]

EXHIBIT A

The Undersigned, William W. Denton and William H. James, both of Oakland, California, hereby offer to purchase from West Coast Redwood Corporation, a corporation, hereinafter called "West Coast", all of that certain sawmill equipment, including all saws, machinery and other necessary tools for use in connection with the operation of said mill, more specifically set forth in that inventory thereof prepared by the undersigned, together with those three certain forty acre tracts of land purchased by the undersigned from Union Lumber Company, and including the existing option cover-

ing six additional forty acre tracts of land, which option is contained in letter addressed to said West Coast and dated May 3, 1943, and filed with Reconstruction Finance Corporation, hereinafter called "RFC", in connection with the loan of said RFC to said West Coast.

1. The undersigned offer to purchase all of the foregoing, being all of the physical assets of said West Coast, for the total sum of fifty thousand (50,000.00) dollars. The undersigned agree to pay said sum in the following manner:

(a) By delivery to West Coast of a bankable promissory note in the sum of forty-five hundred (\$4500.00 dollars, payable on or before six (6) months from date, on which note said West Coast shall be able to realize said sum of forty-five hundred dollars without discount in order to enable it to pay said amount to RFC under its aforesaid loan. Said note shall be delivered on execution hereof.

(b) On the same date, the further sum of eighteen hundred twenty-two and 92/100 (1822.92) dollars, plus interest from December 27, 1943, to the Collector of Internal Revenue on account of the liability of West Coast for withholding taxes withheld from employees of West Coast;

(c) The balance by delivering to West Coast one-half the entire output of lumber and other forest products from said mill and property for a period of six months from and after the date hereof, provided, however, that the undersigned

agree to either pay in cash or in such lumber and forest products an amount sufficient to satisfy the requirements of said RFC loan to said West Coast, as a minimum monthly payment hereunder. If, at the expiration of said period of six months, the undersigned should decide to abandon operations, there shall be no obligation on them, or either of them, hereunder, save and except for one-half of the output of said mill and property or said minimum requirement of said RFC to the date of such abandonment (whichever amount may be larger), and in such event said West Coast shall have full and unimpaired title to all of the property herein agreed to be conveyed, together with such additions and improvements as the undersigned may have installed. The undersigned hereby specifically agree that all additions, replacements and improvements installed upon said property shall immediately become and be the property of said West Coast subject to the terms hereof. In lieu of the delivery of said one-half of said entire output, the undersigned may pay in cash the value thereof after satisfying said West Coast as to such value. In no event shall the monthly payments hereunder be less than the amount due R.F.C. under its loan. [19]

The decreasing balance of said purchase price of fifty thousand (50,000.00) dollars shall bear interest at the rate of four (4) per cent per annum, and the payments shall be applied first to interest unpaid and balance toward principal.

2. The undersigned further agree to improve said mill, by the addition of work, labor and ma-

terials, in a minimum value of three thousand (3000.00) dollars, and to have available sufficient operating capital in order to properly carry on the operation of said mill.

3. The undersigned further agree that none of their rights hereunder shall be assignable, except to Christ's Church of the Golden Rule without the written consent of West Coast first had and obtained.

4. The undersigned further agree to acquire from DeLancey Lewis and Doris B. Lewis, two hundred eighty-six (286) acres of land in Mendocino County, together with timber and water rights, at a price of forty-three hundred sixty (4360.00) dollars, ten acres of which shall consist of the mill-site upon which the mill of said West Coast is now located and which is now subject to a lease from said DeLancey Lewis and Doris B. Lewis to said West Coast. Said contract of purchase shall be assigned to said West Coast to be held by it as security hereunder for the performance of the obligations of the undersigned, with the understanding that said West Coast may further assign said contract of RFC as further security for its advances to West Coast. All of said assignments shall be held in escrow by Title Insurance & Guaranty Company for the account of all interested parties.

5. In the event of any default hereunder on the part of the undersigned in making any payment herein provided, and the continuance of such default for a period of thirty (30) days from and

after written notice by West Coast to the undersigned, the undersigned shall surrender all rights hereunder and all right, title and interest of the undersigned in and to the property herein agreed to be conveyed, together with the improvements, additions, betterments and replacements installed by the undersigned, to said West Coast free of any obligation hereunder and from any claim of the undersigned.

6. In the event of the acquisition of said property from DeLancey Lewis and Doris B. Lewis, as hereinbefore provided, there shall be no rental charged against West Coast for the use of said property so acquired or any thereof, and in the event of any subsequent default of the undersigned hereunder such property so acquired from DeLancey Lewis and Doris B. Lewis shall be subject to the lien of said loan from said RFC to said West Coast as though said property was owned by said West Coast.

7. The undersigned shall conduct all operations of said mill property at their own cost and expense and under their own name or names, or a name selected by them not similar to the name of said West Coast, and without any obligation or responsibility whatsoever on the part of West Coast, and the undersigned agree to carry complete and adequate insurance to protect the interests [20] of West Coast in connection with the operation of said mill by the undersigned.

8. The undersigned further agree to maintain

and carry any and all insurance required to be kept by the terms of the loan to West Coast by RFC, insuring the interests of all parties as they may appear, and all insurance premiums shall be prorated to the date of the execution hereof.

9. It is further understood that the undersigned shall have no title to any of the property hereinbefore mentioned until the full amount of said purchase price of fifty thousand (50,000) dollars and interest shall have been paid to West Coast as herein provided, at which time proper deeds and bills of sale shall be delivered to the undersigned.

Deeds and bills of sale shall be prepared and executed by West Coast and delivered in escrow to Title Insurance and Guaranty Company in San Francisco, subject to delivery upon complete performance in accordance with the terms hereof.

10. In the event of any action being brought to enforce any of the terms hereof by either party, it is further agreed that the prevailing party in such action shall be entitled to reasonable attorney's fees to be fixed by the court and taxed as part of the costs of suit in such action.

11. It is expressly understood that in the event of any default of the undersigned, as hereinbefore provided, all payments theretofore made by them hereunder to West Coast or for its account, or in the acquisition of or payment for any improvements, additions or betterments, shall be deemed to be rental for the use of the property covered hereby, and that, upon the termination of the rights of the

undersigned hereunder by reason of such default, all rights of the undersigned to any sums to paid for such additional property, improvements or betterments, shall cease and terminate.

12. The undersigned further agree to acquire from Union Lumber Company, in accordance with the terms of said outstanding option, the property therein specified, provided that said West Coast shall obtain an extension of sixty (60) days for the exercise of the option as to the next additional parcel to be obtained thereunder, in order to have available timber land for the supply of timber to said mill. All properties obtained under such option by the undersigned shall be immediately assigned and transferred to West Coast, so that West Coast may in turn subject the same to the lien of the encumbrance held by said RFC pending final consummation of this agreement, at which time such property shall be transferred to the undersigned.

13. West Coast shall have at all times the right to enter the premises covered by this agreement to inspect the same and to examine the books, papers and records of the undersigned, relative to their operation of any business conducted by them, on the premises covered hereby.

14. The undersigned agrees to keep full, true and accurate books of account reflecting the business operations of said mill property, showing completely and truly all of the timber and other products cut or removed or manufactured from or on said premises. [21]

15. The undersigned agree that they shall not remove from the premises covered hereby, or any property added hereto, any of the improvements, tools, equipment (excluding motor vehicles or livestock) or buildings of any kind or character, without the written consent of West Coast first had and obtained.

16. Performance of all of the terms hereunder is subject to any delays caused by acts of war, acts of God, strikes, lockouts or any other cause beyond the control of either of the parties hereto.

17. West Coast shall take care of and satisfy all of its outstanding obligations and indemnify and hold harmless the undersigned from all damages, loss, cost and expense occasioned by reason of any failure of West Coast to pay any of its obligations, subject to the terms hereof.

18. Any notice required hereunder to be given to the undersigned shall be mailed by United States registered mail, with return receipt requested, addressed to either or both of the undersigned, with postage fully prepaid thereon at Willits, California. Any notice required hereunder to be given to West Coast shall be mailed by United States registered mail, with return receipt requested, addressed to said West Coast Redwood Corporation, in care of Theodore M. Monell, 1085-7 Mills Building, San Francisco, 4, California.

In witness whereof, the undersigned have here-

unto subscribed their names this 28th day of February, 1944.

WILLIAM W. DENTON.

WILLIAM H. JAMES.

The foregoing offer is hereby accepted. March 22, 1944.

WEST COAST REDWOOD CORPORATION,

By A. R. PETTEY,

President,

And THEODORE M. MONELL,

Assistant Secretary. [22]

This agreement, made and entered into this 6th day of April, 1944, by and between William W. Denton and William H. James, both of Oakland, California, and West Coast Redwood Corporation, a corporation,

WITNESSETH:

Whereas, said William W. Denton and William H. James did, under date of February 28, 1944, make a written offer to said West Coast Redwood Corporation, a corporation, to purchase its sawmill, which offer was accepted under date of March 22, 1944; and

Whereas, said offer and acceptance does not express the full intentions of the parties in that it omits any provision for the payment of the balance of the purchase price in the event that the undersigned continue the operation of said mill;

Now, therefore, it is understood and agreed that said offer and acceptance may be modified to add

thereto as sub-paragraph “(d)” of paragraph “1”, the following:

“(d) The balance of said purchase price of fifty thousand (50,000.00) dollars, in the event the undersigned continue with the operation of said mill property and do not decide to abandon operations as hereinbefore provided, by delivering to West Coast one-half the entire output of lumber and other forest products from said mill and property, as the same are cut and acquired by the undersigned until the entire balance of said purchase price together with interest thereon shall have been fully paid. Provided, however, that the monthly payments hereunder, after payment in full of said RFC obligation, shall not be less than the sum of two thousand (2000.00) dollars per month, and the entire balance of said purchase price shall be fully paid to West Coast not later than October 1, 1945.

It is further understood that all cut timber on said premises may be cut and manufactured into lumber by the undersigned pursuant to the terms hereof.”

WILLIAM W. DENTON.

WILLIAM H. JAMES.

WEST COAST REDWOOD CORPORATION,

By A. T. PETTEY

And THEODORE M. MONELL. [23]

EXHIBIT B

Memorandum of agreement, made and entered into this 28th day of February, 1944, by and between DeLancey Lewis and Doris B. Lewis, his

wife, of San Mateo County, California, hereinafter called "First Parties", and William W. Denton and William H. James, both of Oakland, California, hereinafter called "Second Parties",

WITNESSETH:

Whereas, First Parties are the owners of certain properties hereinafter described, a portion of which is the millsite on which the mill of West Coast Redwood Corporation is presently situated; and

Whereas, Second Parties desire to purchase said property for the total sum of forty-three hundred sixty (4360.00) dollars, on the terms and conditions hereinafter set forth; and

Whereas, Second Parties are, under even date herewith, entering into an option agreement covering the purchase of certain mill equipment and property of West Coast Redwood Corporation; and

Whereas, said DeLancey Lewis is an insurance broker, and First Parties are willing to sell said property to Second Parties in accordance with the terms hereof, including the right to act as exclusive insurance broker for Second Parties as herein provided,

Now, therefore, it is hereby understood and agreed, by and between the respective parties hereto, as follows:

1. First Parties hereby agree to sell, assign, transfer and convey unto Second Parties the following described property situated in the County of Mendocino, State of California, to-wit:

Parcel One: Lot 2, Section 30, Township 19 North, Range 14 West, M.D.B. & M.

Parcel Two: Southwest $\frac{1}{4}$ of Southeast $\frac{1}{4}$ of Section 10, Township 19 North, Range 14 West, M.D.B. & M.

Parcel Three: All that certain property described in a deed from First Parties to Geo. J. Stempel, et ux., recorded in Book 163 of Official Records, as an exception of 208 acres not included in the granting clause of said deed.

2. First Parties agree to sell said property, together with all timber and water rights owned by First Parties, to Second Parties for the total sum of forty-three hundred sixty (4360.00) dollars, payable as follows:

Five Hundred (500.00) dollars upon the execution hereof, receipt whereof is hereby acknowledged by First Parties, and the balance in seventeen (17) equal monthly installments of two hundred twenty-seven and 06/100 (227.06) dollars, or more, plus interest on the unpaid principal at the rate of six (6) per cent per annum, principal and interest payable in lawful money of the United States, on the 1st day of each and every month commencing April 1, 1944, until the full purchase price shall have been paid. [24]

3. Sellers agree, upon payment in full for said property, to transfer the same free and clear of all liens and encumbrances, excepting easements of

record, to Second Parties, together with all improvements now on said property.

4. Second Parties promise and agree to pay said sums aforesaid at the times and in the manner above set forth, and further agree to pay all taxes and assessments charged against said property until Second Parties shall have paid in full therefor.

5. Second Parties further agree to keep the improvements on said property in good order, condition and repair, and to keep the same insured for the benefit of the respective parties hereto, as their interests may appear, in insurance companies satisfactory to First Parties.

6. Second Parties agree that all improvements installed by them on said premises, excepting movable fixtures, shall immediately become part of the realty and belong to First Parties and that Second Parties shall have no interest therein or claim thereto, or any part thereof, until payment in full of all sums due from them hereunder.

7. Second Parties further hereby appoint said DeLancey Lewis as their exclusive insurance broker, for a period of five years from and after the date hereof, to handle for them the placing of all insurance required or carried in connection with the operation of said sawmill and property and agree that no other agent or broker shall act for them, or either of them during said period, and that all insurance carried in connection with said business shall be placed through said DeLancey Lewis and not otherwise handled or placed. Pro-

vided, however, that said DeLancey Lewis shall at all times use his best efforts to effect such economies in the placing of such insurance as any other prudent insurance broker would under like circumstances.

8. First Parties further agree to execute a deed for the property hereinbefore described to Second Parties and to deposit such deed with Title Insurance and Guaranty Company, in San Francisco, with instructions to deliver same upon payment in full of all sums due hereunder to First Parties.

9. In the event of any action or proceedings being brought by either party hereto to enforce any of the terms hereof, it is further agreed that the prevailing party in such action or proceeding shall be entitled to reasonable attorney's fees, which shall be fixed by the court and taxed as costs of suit in such action or proceeding.

In witness whereof, the parties hereto have executed this agreement the day and year first herein written.

DeLANCEY LEWIS,

DORIS B. LEWIS,

First Parties.

WILLIAM W. DENTON,

WILLIAM H. JAMES,

Second Parties.

[Endorsed]: Filed April 1, 1946. Burton J. Wyman, Referee in Bankruptcy.

[Endorsed]: Filed July 11, 1946. C. W. Calbreath, Clerk. [25]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE AND SETTING
DAY OF HEARING.

Upon consideration of the petition of West Coast Redwood Corporation and DeLancey Lewis and Doris B. Lewis in reclamation, filed herein, with respect to the sawmill property and land near Laytonville, in Mendocino County, California, known as the "Denton Sawmill",

It is hereby ordered that Paul W. Sampsell, L. Boteler and Stewart McKee, Trustees in bankruptcy of the bankrupt above named, and said Bankrupt, be, and they are hereby, required to appear before the undersigned Referee in Bankruptcy, at his Courtroom in the Grant Building, at Seventh and Market Streets, in San Francisco, California, on Monday, April 15, 1946, at the hour of ten o'clock a. m., of said day, then and there to show cause why the said petition should not be granted.

It is further hereby ordered that service of said petition [26] and this order to show cause shall be sufficient if made by mail from San Francisco, on or before April 5, 1946.

It is further hereby ordered that any respondent desiring to contest the said petition shall serve and file herein an answer or other pleading at least five days prior to said April 15, 1946.

Dated: April 3rd, 1946.

BURTON J. WYMAN,
Referee in Bankruptcy.

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

Dated: April 3, 1946.

BURTON J. WYMAN,
Referee in Bankruptcy.

[Endorsed]: Filed April 4, 1946. Burton J. Wyman.

[Endorsed]: Filed July 11, 1946. C. W. Calbreath, Clerk. [27]

[Title of District Court and Cause.]

ANSWER OF TRUSTEES IN BANKRUPTCY
TO PETITION IN RECLAMATION OF
DELANCEY LEWIS, ET AL.

Now come Paul W. Sampsell, L. Boteler and Stewart McKee, the trustees in bankruptcy of the estate of the above named bankrupt corporation, and, for answer to the petition in reclamation filed herein by DeLancey Lewis and Doris B. Lewis, his wife, and West Coast Redwood Corporation, denies each and every allegation in the said petition contained.

Wherefore, the said trustees pray that the said petition be denied and for general relief.

Dated: Aug. 6, 1946.

IRVING M. WALKER,
GRAINGER & HUNT,

By REUBEN G. HUNT,
Attorneys for Trustees.

Verification of the foregoing answer is hereby
waived this 8th day of April, 1946.

Attorney for
DeLancey Lewis, et al.

[Endorsed]: Filed April 9, 1946. Burton J.
Wyman, Referee in Bankruptcy.

[Endorsed]: Filed July 11, 1946. C. W. Cal-
breath, Clerk. [28]

[Title of District Court and Cause.]

ANSWER OF WEST COAST REDWOOD COR-
PORATION AND DeLANCEY LEWIS AND
DORIS B. LEWIS TO PETITION FOR AN
ORDER OF SALE (DENTON SAWMILL).

Come now West Coast Redwood Corporation, a
corporation, and DeLancey Lewis and Doris B.
Lewis, his wife, and file this, their answer to the
petition for an order of sale of the Denton Saw-
mill in the above matter and respectfully represent:

I.

That West Coast Redwood Corporation, herein-
after referred to as "corporation," was duly cre-

ated, organized and existing under and by virtue of the laws of the State of California.

II.

That DeLancey Lewis and Doris B. Lewis are husband and wife and are hereinafter referred to as "sellers." [29]

III.

That said corporation and said sellers did on April 2, 1946, file herein their petition in reclamation in which said respondents seek to reclaim the property for which an order of sale is sought by the Trustees in Bankruptcy of the above named bankrupt. That reference is hereby made to said petition in reclamation and by such reference said petition, together with the exhibits thereto, is hereby incorporated as fully and to the same extent as though at this point re-copied at length in haec verba and pleaded in legal effect.

IV.

That as alleged in said petition in reclamation your respondents herein are the owners of all of the properties for which an order of sale is herein sought by virtue of the terms of said agreements and are entitled to possession of all of said property by reason of the defaults of the purchasers under said contract as alleged in said petition in reclamation or in lieu of such possession are entitled to full payment of the entire amounts due to them under said contracts together with advances made by them together with interest thereon and attorney's fees as alleged in said petition.

Wherefore, said respondents pray:

1. For an order of restoration to them in accordance with their petition in reclamation heretofore filed herein; or

2. That said bankrupt and said Trustees in Bankruptcy be directed to pay to your respondents the full amounts due to them under said contracts hereinbefore mentioned, together with interest thereon and together with the additional amounts advanced by them as alleged in said petition in reclamation; and

3. That said bankrupt and said Trustees in Bankruptcy be directed to pay to respondents the sum of three thousand five [30] hundred (3500.00) dollars as attorney's fees herein to be fixed as costs in this proceeding; or

4. If an order of sale be made herein that such order be made subject to all of the rights of your respondents as hereinbefore set forth, and alleged in said petition in reclamation heretofore filed herein, to collect the balances due to them together with interest and the advances made by them, and attorney's fees; and

5. That said respondents be granted such other and further relief as may be meet and proper in the premises.

Dated this 5th day of April, 1946.

Attorney for Respondents. [31]

Northern District of California,
City and County of San Francisco.—ss

DeLancey Lewis, being first duly sworn, deposes
and says:

That he is one of the respondents named in the
foregoing answer; that he has read said answer
and knows the contents thereof, and that the same
is true to his own knowledge, excepting as to those
matters therein set forth upon information and
belief, and as to those matters that he believes it
to be true.

DELANCEY LEWIS.

Subscribed and sworn to before me this 5th day
of April, 1946.

DOROTHY H. McLENNAN,

Notary public in and for the City and County
of San Francisco.

Receipt of a copy of the foregoing answer is here-
by admitted this 6th day of April, 1946.

IRVING M. WALKER,

GRAINGER & HUNT,

Attorneys for Trustees.

[Endorsed]: Filed April 15, 1946. Burton J.
Wyman, Referee in Bankruptcy.

[Endorsed]: Filed July 11, 1946. C. W. Cal-
breath, Clerk. [32]

[Title of District Court and Cause.]

RETURN OF SALE OF REAL AND
PERSONAL PROPERTY

Paul W. Sampsell, L. Boteler and Stewart McKee, the trustees in bankruptcy of the estate of the above named corporation, respectfully show:

On November 1, 1945, the above entitled proceeding was commenced in the above entitled court by the above named corporation under Chapter XI of the Bankruptcy Act, as amended, for an arrangement between the said corporation and its creditors. On November 15, 1945, in the same case, the said corporation filed its voluntary petition in bankruptcy. Thereafter and on November 19, 1945, the said corporation was duly adjudicated a bankrupt upon [33] said petition, and further proceedings in the case were referred by the court to Benno M. Brink, a Referee in Bankruptcy thereof. On November 20, 1945, Paul W. Sampsell, J. Ray Files, and Stewart McKee were appointed and qualified by the court as primary receivers in bankruptcy of the estate of the said corporation. Thereafter they acted in that capacity until January 4, 1946. On January 4, 1946, Paul W. Sampsell, L. Boteler, and Stewart McKee were appointed, with the approval of the court, and qualified by the court, as trustees in bankruptcy of the estate of the said corporation, and ever since have been and now are the duly appointed, qualified, and acting trustees in bankruptcy of the said estate. On November 26, 1945, upon the application of the said primary

receivers in bankruptcy, ancillary proceedings in bankruptcy were commenced and thereafter prosecuted in the United States District for the Northern District of California. Thereafter and on November 26, 1945, the said District Court for Northern California appointed and qualified as ancillary receivers in bankruptcy for the Northern District of California, Paul W. Sampsell of Los Angeles and William G. Mikulich of San Francisco. Thereafter the said ancillary receivers in bankruptcy for the Northern District of California continued to act as such until 10:30 a.m. on Monday, February 18, 1946, when their duties as such ancillary receivers in bankruptcy, except to account to said District Court for the Northern District of California for their administration, were terminated, and they were superseded in office by said trustees in bankruptcy.

Among the assets of the bankrupt estate is a sawmill located about ten miles northwest of Willits, Mendocino County, California, comprising real estate, machinery and equipment, timber options, and rolling stock and other loose articles of personal property, purchased partly on contract from DeLancey Lewis and Doris B. Lewis, his wife, West Coast Redwood Corporation, a corporation, [34] and Stevenson Farm Equipment Co., a partnership. The real estate consists of six parcels of land located in said Mendocino County and is described as set forth in "Exhibit A" hereto attached and made a part hereof.

The title of the trustees in bankruptcy to the

sawmill, real and personal property, is equitable. At the time of bankruptcy, the bankrupt corporation was purchasing the said real estate and machinery and equipment of the sawmill on contract from said DeLancey Lewis and Doris B. Lewis, and West Coast Redwood Corporation. Also at the time of bankruptcy, the bankrupt was purchasing certain rolling stock used at the mill on contract from said Stevenson Farm Equipment Co. The said Stevenson Farm Equipment Co., a partnership, also holds an equitable lien on all the property. The Stockton Morris Plan Co., a corporation, held a chattel mortgage on other rolling stock. Parcels 4, 5 and 6 of the real estate were acquired by the bankrupt through tax deeds, and title companies will not insure tax titles.

The above entitled court, acting through Burton J. Wyman, Referee in Bankruptcy, signed, filed and entered herein on May 24, 1946, an order determining the balances due upon such conditional sales contracts, equitable lien, and chattel mortgage, as follows:

1. DeLancey Lewis and Doris B. Lewis, his wife, conditional sales contract on real property, dated February 28, 1942, plus interest upon the sum of \$1,811.61, at the rate of 6% per annum from August 15, 1945, until paid\$3,748.10

2. West Coast Redwood Corporation, a corporation, conditional sales contract on machinery and equipment of sawmill, dated

March 22, 1944, plus interest thereon at the rate of 4% per annum from October 1, 1945, until paid\$27,366.70

3. Theodore Monell, attorney for DeLancey Lewis and Doris B. Lewis, his wife, and West Coast Redwood Corporation, a corporation, counsel fees in connection with their conditional sales contracts 2,500.00

4. Stevenson Farm Equipment Co., a partnership, conditional sales contracts upon rolling stock, dated October 7, 1944 and April 15, 1945, and equitable lien on all the property 4,274.28

5. Bryce Swartfager, attorney for Stevenson Farm Equipment Co., a partnership, counsel fees in connection with its conditional sales contracts 150.00

6. Stockton Morris Plan Company, a corporation, chattel mortgage lien on rolling stock, dated April 10, 1945 2,373.57

Total\$40,412.65

Industrial Equipment Co. holds a conditional sales contract covering a light plant in which the bankrupt has an equitable interest. The bankrupt contends that there is a balance due of \$89.22 but the industrial Equipment Co. asserts that \$120.22 is the correct balance. The total amount due upon

all these items, including interest to date, amounts to a little less than \$43,000.00.

An inventory of the said personal property except timber options has been filed herein, and a copy thereof is hereto attached as "Exhibit B" and made a part hereof. The original inventory figure was \$90,439.00. But certain third parties claim title to, and right to the possession of, certain articles on that list, adverse to the trustees in bankruptcy. The inventory figure of these articles is \$4,429.50, thus leaving a net figure of \$86,009.50. Such claim of these third parties is not conceded by the trustees in bankruptcy.

The said property, real and personal, has been appraised herein at \$42,000.00.

Pursuant to extensive advertising through circulars sent to prospective bidders throughout California, (a copy of the notice of sale is hereto attached as Exhibit C) bids for the sale of the said real and personal property, free and clear of liens and claims thereon, except current county taxes which are to be prorated as of the date of the escrow [36] hereinafter mentioned, and any lien arising out of county taxes for the fiscal year 1946-1947, and except the following:

Existing roads and rights of way.

Right of Way for pipe line granted to Chas. Underhill by Luella Morrell and Luella Morrell, Guardian of Harriet Adeline Davis, a minor, by

instrument dated Nov. 10, 1922 and recorded same day in Libar 170 of Deeds, page 103, Mendocino County Records, affects Parcel One.

Water right granted by DeLancey Lewis et ux, to Geo. J. Stempel et ux by deed dated Feb. 19, 1943, recorded in Liber 163 of Official Records, page 39, Mendocino County Records. Affects Parcel One.

were received by the trustees before Referee in Bankruptcy Burton J. Wyman in his courtroom on May 20, 1946. After considerable competition, the highest bid made was \$66,600.00, submitted by A. J. Barbee doing business under the trade name of California-Pacific Lumber Co. The trustees have accepted the said bid, as the highest and best bid obtainable and return the same herewith for confirmation. Such a sale will enable the trustees to clear off all liens and claims upon the property and leave an equity for the bankrupt estate of over \$24,000.00.

The sale is to be consummated through an escrow with the Title Insurance and Guaranty Co., of San Francisco. Current taxes are to be prorated as of the date of the escrow. There are some previous unpaid taxes that must be paid out of the escrow by the estate. U. S. revenue stamps, notary and recording fees are to be paid by the estate. [37] The cost of a policy of title insurance is to be borne by the purchases.

\$6660.00, or 10% of the entire amount of the bid,

viz., \$66,600.00, has been deposited with the court of the trustees in bankruptcy. If for any good and sufficient reason it shall appear that it would be equitable to return to the buyer the said purchase price, or any part thereof, by reason of undue delay in completion of the escrow, uncurable defects in title, etc., the buyer may apply to the above-entitled court for relief upon due notice to the trustees in bankruptcy. Upon confirmation of the sale by the court, the purchaser is to be let into possession of the property, but church members upon the property shall have fifteen days thereafter in which to remove themselves and their effects from the premises. In the event, for any good and sufficient reason, the said escrow cannot be closed, or there appears to be uncurable defects in the titles to the properties, and the purchaser shall apply to this court for a rescission of the sale, an equitable financial adjustment, under, the supervision of the court, between the purchaser and the trustees in bankruptcy, shall be made with respect to the use of the premises by the purchaser while he held possession.

During the course of administration herein it is necessary that such property be liquidated by sale; and this sale apparently produces the best price obtainable under existing circumstances.

On May 10, 1946, an order was made by the District Court of the United States, Central Division, Northern District of California, the court

of primary jurisdiction, acting through Benno M. Brink, a referee in bankruptcy thereof, authorizing the said trustees to sell the said real and personal property. [38] The said order was made after due notice given to creditors pursuant to the provisions of Sec. 58 of the Bankruptcy Act. A certified copy of said order is hereto attached and made part hereof as "Exhibit D".

Wherefore, the said trustees pray that the said sale be confirmed as above outlined, and for general relief.

Dated: This 23rd day of May, 1946.

/s/ PAUL W. SAMPSELL,
Trustee.

/s/ L. BOTLER,
Trustee.

/s/ STEWART McKEE,
Trustee.

[Endorsed]: Filed May 25, 1946. Burton J. Wyman, Referee in bankruptcy. [39]

State of California,
County of Los Angeles—ss.

L. Botler, being first duly sworn, deposes and says:

I am one of the trustees named in the foregoing return of sale and make this verification for and on behalf of all of the trustees. I have read the foregoing return of sale and know the contents

thereof, and the same is true to the best of my knowledge, information, and belief.

L. BOTELEK,

Affiant.

Subscribed and sworn to before me this 23rd day of May, 1946.

[Seal]

BESS A. ALDRICH,

Notary Public in and for said
County and State.

[Endorsed]: Filed May 25, 1946. Burton J. Wyman, Referee in Bankruptcy.

[Endorsed]: Filed July 11, 1946. C. W. Calbreath, Clerk. [40]

[Title of District Court and Cause.]

STIPULATION RE WILLITS SAWMILL

The above entitled court, acting through Burton J. Wyman, a Referee in Bankruptcy thereof, having signed, filed and entered herein on May 27, 1946, its order directing that Paul W. Sampsell, L. Boteler and Stewart McKee, the Trustees in Bankruptcy herein, if they desire to retain as assets of the estate, certain properties, real and personal, referred to in said order, they shall, on or before June 1, 1946, pay to DeLancy Lewis and Doris E. Lewis, his wife, and to Westcoast Redwood Corporation, a corporation, and to Stevenson Farm Equipment Company, a corporation, and to Stockton

Morris Plan Company, a corporation, certain monies specified in the said order; and

Whereas, the said Trustees in Bankruptcy are engaged in endeavoring to sell the said property, real and personal, for a price in excess of the aggregate amount of said monies so to be paid, and also have in view a refinancing offer which contemplates the paying off of the said monies; and

Whereas, in the event of a sale or a refinance, an escrow with [41] a responsible title company will be necessary, and Title Insurance and Guaranty Co., of 130 Montgomery St., San Francisco, is satisfactory for that purpose,

It Is Hereby Stipulated and Agreed that the said time of June 1, 1946, is hereby extended to June 17, 1946, or, if, in the meantime, an escrow is opened with the said title company for the purpose of consummating a sale or a refinancing scheme, which escrow is satisfactory to the parties, then until the completion of such escrow.

It Is Hereby Further Stipulated and Agreed that all parties hereto will cooperate to the end that all necessary documents and papers shall be executed and delivered into such escrow in order that good title to the property shall appear.

The approximate amount of the said monies so to be paid is \$42,000.00

PAUL W. SAMPSELL,

L. BOTELER and

STEWART McKEE,

Trustees in Bankruptcy,

By GRAINGER & HUNT,

By /s/ REUBEN G. HUNT,

Their Attorneys.

/s/ THEODORE M. MONNELL,

Attorney for DeLancey Lewis
and Doris B. Lewis, his
wife, and West Coast Red-
wood Corporation, a corp.

/s/ BRYCE SWARTFAGER,

Attorney for Stevenson Farm
Equipment Co.

/s/ LAFAYETT J. SMALLPAGE,

Attorney for Stockton Morris
Plan Co., a corp.

The foregoing stipulation is hereby approved this 27th day of May, 1946, and it is so ordered.

/s/ BURTON J. WYMAN,

Referee in Bankruptcy.

[Endorsed]: Filed May 27, 1946. Burton J. Wyman, Referee in Bankruptcy.

[Endorsed]: Filed July 11, 1946. C. W. Calbreath, Clerk. [42]

[Title of District Court and Cause.]

ORDER CLEARING TITLE, DETERMINING
AMOUNTS DUE UNDER LIENS, AND
OF SALE

Paul W. Sampsell, L. Boteler, and Stewart McKee, the Trustees in Bankruptcy of the estate of the above-named corporation, having filed herein their petition for release of attachments and executions, and having later filed herein their petition for an order of sale, with relation to the project of the bankrupt corporation known as the Denton Sawmill, near Willits, Mendocino County, California,

And an order to show cause upon the said petitions having been duly issued herein, and the said petitions and orders to show cause having been duly served upon the respondents named in the said petitions,

And DeLancey Lewis and Doris B. Lewis, and West Coast Redwood Corporation, a corporation, having filed herein answers to the said petition for an order or sale, and Stevenson Farm Equipment Co., a partnership, having filed herein an answer to the said petition for release of attachments and executions, [43]

And DeLancey Lewis and Doris B. Lewis, and West Coast Redwood Corporation, a corporation, having filed herein a petition in reclamation of the real property, and most of the personal property, involved in said sawmill, and the court having there-

upon issued an order to show cause upon said last named petition, directed to the Trustees in Bankruptcy, and the said Trustees in Bankruptcy having thereafter filed herein an answer to the said petition in reclamation,

And the said petitions and answers coming on regularly for hearing before the undersigned Referee in Bankruptcy on March 15 and April 15, 1946, Reuben G. Hunt, of Grainger and Hunt, appearing as counsel for the Trustees in Bankruptcy; Theodore M. Monell appearing as counsel for DeLancey Lewis and Doris B. Lewis, and West Coast Redwood Corporation, a corporation; Bryce Swartfager appearing as counsel for Stevenson Farm Equipment Co.; and William W. Denton appearing in person,

And the Bank of Willits, E. B. Johnson, and the Sheriff of Mendocino County, California, respondents, failing to appear either in person or by attorney, It Is Hereby Ordered that the defaults of the said Bank of Willits, Sheriff of Mendocino County, and E. B. Johnson be and they are hereby entered,

And the issues raised by the said pleadings having been heard before the said Referee and submitted to him for decision,

The said Referee hereby makes the following

FINDINGS OF FACT

I.

On November 1, 1945, the above-entitled proceeding was commenced in the above-entitled court by

the above-named corporation under Chapter XI of the Bankruptcy Act, as amended, for an arrangement between the said corporation and its creditors. On November 15, 1945, in the same case, the said corporation [44] filed its voluntary petition in bankruptcy. Thereafter and on November 19, 1945, the said corporation was duly adjudicated a bankrupt upon said petition, and further proceedings in the case were referred by the court to Benno M. Brink, a Referee in Bankruptcy thereof. On November 20, 1945, Paul W. Sampsell, J. Ray Files, and Stewart McKee were appointed and qualified by the court as primary receivers in bankruptcy of the estate of the said corporation. Thereafter they acted in that capacity until January 4, 1946. On January 4, 1946, Paul W. Sampsell, L. Boteler, and Stewart McKee were appointed, with the approval of the court, and qualified by the court, as Trustees in Bankruptcy of the estate of the said corporation, and ever since have been and now are the duly appointed, qualified, and acting Trustees in Bankruptcy of the said estate.

II.

On November 26, 1945, upon the application of the said primary receivers in bankruptcy, ancillary proceedings in bankruptcy were commenced and thereafter prosecuted in the United States District for the Northern District of California. Thereafter and on November 26, 1945, the said District Court for Northern California appointed and qualified as ancillary receivers in bankruptcy for the Northern District of California, Paul W. Sampsell of Los

Angeles and William C. Mikulich of San Francisco. Thereafter the said ancillary receivers in bankruptcy for the Northern District of California continued to act as such until 10:30 a.m. on Monday, February 18, 1946, when their duties as such ancillary receivers in bankruptcy, except to account to said District Court for the Northern District of California for their administration, were terminated, and they were superseded in office by said Trustees in Bankruptcy.

III.

Among the assets of the bankrupt estate is a sawmill located about ten miles northwest of Willits, California, comprising [45] real estate, the machinery and equipment of the said sawmill, and other personal property, purchased partly on contract from DeLancey Lewis and West Coast Redwood Corporation, a corporation. Ever since July 27, 1945, and up to the time of bankruptcy, the bankrupt corporation operated the said real and personal property as a sawmill through William W. Denton as its agent. On November 1, 1945, when the bankruptcy proceedings were commenced, as aforesaid, the bankrupt corporation was the owner of, and in the actual possession of, the said real and personal property, pursuant to contracts of sale from DeLancey Lewis and Doris B. Lewis, his wife, and West Coast Redwood Corporation, a corporation. Since the commencement of the bankruptcy proceeding, the said sawmill has been operated under the jurisdiction of the bankruptcy court by the said William W. Denton for the benefit of

the bankrupt estate. The said Stevenson Farm Equipment Co., a partnership, furnished to the said William W. Denton, prior to July 27, 1945, and subsequent thereto, materials and labor of the reasonable value of \$740.96, without actual knowledge of a transfer on July 27, 1945, by the said William W. Denton to the bankrupt corporation of all of his right, title, and interest in and to the real and personal property covered by said sawmill. Such materials and labor were so furnished in sole reliance upon the credit of the said William W. Denton and without any knowledge that the real party-in-interest, after July 27, 1945, was the said bankrupt corporation. The said amount of \$740.96 has never been paid. The said transfer by the said William W. Denton to the bankrupt was made without a fair consideration and while the said William W. Denton was engaged in business and left the said William W. Denton without any capital.

IV.

On April 10, 1945, and prior to July 27, 1945 when the said William W. Denton transferred to the bankrupt corporation all of his right, title, and interest in and to the real and personal property covered by said sawmill, the said William W. [46] Denton, with others, executed and delivered to the Stockton Morris Plan Company of Stockton, California, their promissory note for \$4,346.00. The payment of said note was secured by a chattel mortgage executed and delivered by the said William W. Denton, and others, to the said Stockton Morris Plan Company on or about April 10, 1945,

covering two logging trailers and two logging trucks. The balance due and unpaid upon the said promissory note and chattel mortgage is the sum of \$2,373.57. The bankrupt corporation took over the property covered by the said chattel mortgage subject to the same.

V.

On October 7, 1944, the said Stevenson Farm Equipment Co., a partnership, executed and delivered to the said William W. Denton a conditional sales contract covering a tractor and a bulldozer, and thereupon delivered the said tractor and the said bulldozer to the said William W. Denton, who used the same until July 27, 1945, and thereafter the bankrupt corporation has used and is now using the same. The bankrupt corporation took over the property covered by said conditional sale contract, subject to the same, and subject to the payment of the said sum of \$740.96. On April 15, 1945, the said Stevenson Farm Equipment Co., a partnership, executed and delivered to the said William W. Denton a conditional sale contract covering a Carco winch, and thereupon delivered the said Carco winch to the said William W. Denton, who used the same until July 27, 1945, and thereafter the bankrupt corporation has used and is now using the same. The bankrupt corporation took over the property covered by said conditional sale contract, subject to the same, and subject to the payment of the said sum of \$740.96. The balance due upon the said two conditional sale contracts is the sum of \$3,533.32. The said conditional sale contracts provide for the payment to

counsel for the said Stevenson Farm Equipment Co. of reasonable attorney's [47] fees incurred in the collection of the balances due upon said contracts. Bryce Swartfager, of Santa Rosa, has acted as counsel for the said Stevenson Farm Equipment Co. in connection with the collection of the balances due on the said contracts, and has performed legal services herein for the said Stevenson Farm Equipment Co., the reasonable value of which is \$150.00. Neither said sum of \$3,533.32, or said sum of \$150.00, has been paid.

VI.

On March 22, 1944, West Coast Redwood Corporation, a corporation, as seller, entered into a conditional sales contract with the said William W. Denton and William H. James, as purchasers, covering the said sawmill and the equipment thereof, the purchase price being \$50,000.00. The balance due and unpaid upon such purchase price is the sum of \$27,366.70, together with interest thereon at the rate of 4% per annum from October 1, 1945, until paid. The bankrupt corporation, on July 27, 1945, took over the property covered by the said conditional sales contract subject to the same. On February 28, 1942, DeLancey Lewis and Doris B. Lewis, his wife, executed and delivered to the said William W. Denton and William H. James, a conditional sales contract covering the real property upon which said sawmill is located. The balance due upon the said conditional sales contract is \$3,748.10, together with interest on the sum of \$1,811.61 at the rate of 6% per annum from August 15, 1945,

until paid. The said William H. James no longer has any interest in said contracts, or any of the property covered thereby.

VII.

The said conditional sales contracts, wherein West Coast Redwood Corporation, a corporation, and DeLancey Lewis and Doris B. Lewis are the sellers, provide that, in the event of any action being brought to enforce any of the terms of the said contracts, the prevailing party in such action shall be entitled to [48] reasonable attorney's fees to be fixed by the court and taxes as part of the costs of suit in such action. Theodore M. Monell has acted as counsel for the said West Coast Redwood Corporation, a corporation, and DeLancey Lewis and Doris B. Lewis in commencing and prosecuting a proceeding herein for the enforcement of the terms of the said conditional sales contracts and the reclamation of the property covered thereby. The reasonable value of his legal services in connection therewith is the sum of \$2,500.00.

VIII.

Ever since July 27, 1945, the said William W. Denton maintained in the Bank of Willits, at Willits, Mendocino County, California, a bank account in his own name but solely as agent for the bankrupt corporation. Subsequent to the commencement of the bankruptcy proceeding, E. B. Johnson of Ukiah, California, commenced and prosecuted in the Superior Court of Mendocino County, California, an action against the said William W.

Denton, to recover a balance alleged to be due for goods sold and delivered to him. In the said action, the said E. B. Johnson caused to be garnisheed the sum of \$457.14 remaining on hand in the said bank account of William W. Denton at the said Bank of Willits, although the title to the said money was in the bankrupt corporation. Subsequent to the commencement of the bankrupt proceeding, said Stevenson Farm Equipment Co., a partnership, commenced an action in the said Superior Court against the said William W. Denton to recover a balance alleged to be due from him for goods sold and delivered, and in said action garnisheed the said bank account.

IX.

During the course of the administration herein it will be necessary for the trustees in bankruptcy to dispose of the said property by sale or otherwise or provide some method for the satisfaction of such liens if the property is to be retained by the estate. [49]

From the foregoing Findings of Fact, the Referee makes the following:

CONCLUSIONS OF LAW

I.

If the Trustees in Bankruptcy desire to retain possession of, and acquire full title to the said logging trailers and trucks, they must pay the Stockton Morris Plan Company the sum of \$2,373.57.

II.

If the said Trustees in Bankruptcy desire to retain possession of, and acquire full title to the said tractors and bulldozers, they must pay Stevenson Farm Equipment Co., a partnership, the sum of \$3,533.22, upon receiving from it a cancellation of such conditional sales contracts and a bill of sale to the property covered thereby, and to Bryce Swartfager, the attorney for the said partnership, the sum of \$150.00. These payments must be made on or before June 1, 1946, or the said tractors and bulldozers returned to said Stevenson Farm Equipment Co. If said tractors and bulldozers are so returned, the estate must pay said Stevenson Farm Equipment Co. for the use thereof, at the rate of \$315.00 per month from and after April 15, 1946.

III.

If the said Trustees in Bankruptcy desire to retain possession of the land and sawmill equipment involved in the said conditional sales contracts of West Coast Redwood Corporation, a corporation, and DeLancey Lewis and Doris B. Lewis, and acquire full title thereto, they must pay West Coast Redwood Corporation, a corporation, on or before June 1, 1946, the sum of \$27,366.70, plus interest thereon at the rate of 4% per annum from October 1, 1945, upon receiving a deed to such real property; and they must also pay DeLancey Lewis and Doris B. Lewis, on or [50] before June 1, 1946, the sum of \$3,748.10, plus interest on the sum of \$1,811.61, at the rate of 6% per annum from August 15, 1945,

upon receiving a bill of sale of such personal property; and they must also pay the said Theodore M. Monell, on or before June 1, 1946, the sum of \$2,500.00 as attorney's fees in connection with his legal services herein on behalf of the said West Coast Redwood Corporation, a corporation, and DeLancey Lewis and Doris B. Lewis.

IV.

If the said Trustees in Bankruptcy desire to retain possession of the land and sawmill equipment involved herein, they should pay to Stevenson Farm Equipment Co., a partnership, the sum of \$740.96.

V.

Bank of Willits, a corporation, has no right, title or interest in, or lien upon, the said sum of \$457.14 now on deposit with it in the name of the said William W. Denton, adverse to the said Trustee in Bankruptcy, and should forthwith pay over the said money to the said Trustees in Bankruptcy.

VI.

The Trustees in Bankruptcy should be authorized to sell such property either subject to or free and clear of liens and claims or free and clear of some liens and claims and subject to others.

VII.

The said garnishments are without legal force or effect.

From the foregoing Findings of Fact and Conclusions of Law It Is Hereby Ordered, that if the

Trustees in Bankruptcy shall retain the respective land, sawmill equipment and rolling stock herein involved, they shall respectively

1. Pay to the Stockton Morris Plan Company, a [51] corporation, the sum of \$2,373.57, upon receiving a release and satisfaction of the said chattel mortgage.

2. Pay to Stevenson Farm Equipment Co., on or before June 1, 1946, the sum of \$3,533.32, upon receiving a cancellation of said conditional sales contracts and a bill of sale covering the personal property included therein, and to Bryce Swartfager the sum of \$150.00, or return to the said Stevenson Farm Equipment Co., a partnership, the tractors and bulldozers above mentioned, together with rent for the use of the same in the meantime at the rate of \$315.00 per month.

3. Pay to West Coast Redwood Corporation, a corporation, on or before June 1, 1946, the sum of \$27,366.70, together with interest thereon at the rate of 4% per annum from October 1, 1945, until paid, upon receiving a bill of sale to the personal property involved in the sawmill, or deliver to said West Coast Redwood Corporation, a corporation, the possession of, and a bill of sale to the personal property covered by the conditional sales contract given by West Coast Redwood Corporation, a corporation, as above mentioned.

4. Pay to DeLancey Lewis and Doris B. Lewis, on or before June 1, 1946, the sum of \$3,748.10, plus interest on the sum of \$1,811.61 at the rate of 6%

per annum from August 15, 1945, until paid, upon receiving a deed to the real property involved in the sawmill, or execute and deliver to the said DeLancey Lewis and Doris B. Lewis, a quit-claim deed to the land covered by the conditional sales contract given by DeLancey Lewis and Doris B. Lewis, as above mentioned, together with improvements thereon.

5. Pay to Theodore M. Monell, on or before June 1, 1946, as attorney's fees for legal services herein on behalf of said West Coast Redwood Corporation, a corporation, and said DeLancey Lewis and Doris B. Lewis, the sum of \$2,500.00, if the said Trustees in Bankruptcy shall, on or before that date, pay off the balances due to said West Coast Redwood Corporation, a corporation, and DeLancey Lewis and Doris B. Lewis.

6. Pay to Stevenson Farm Equipment Co., a partnership, the sum of \$740.96.

It Is Hereby Further Ordered That:

1. The Bank of Willits of Willits, Mendocino County, California, shall disregard the said garnishments and forthwith pay over to the said Trustees in Bankruptcy the said sum of \$457.14 now on deposit with it in the name of William W. Denton.

2. The said William W. Denton has no right, title or interest in, or lien upon, any or all of the property covered by this Order.

3. The Trustees in Bankruptcy are authorized to sell the said property either free and clear of

liens, or subject thereto, or free and clear of some liens and subject to others, or provide some method for the satisfaction of such liens if the property is retained by the estate.

4. The said payments shall be made by the said Trustees in Bankruptcy on or before June 1, 1946, in default of which the Trustees in Bankruptcy shall abandon the property herein involved as assets burdensome to the estate.

Dated: This 15th day of April, 1946.

BURTON J. WYMAN,
Referee in Bankruptcy. [53]

The foregoing Order is hereby approved this
.....day of April, 1946.

GRAINGER AND HUNT,
By REUBEN G. HUNT,
Attorneys for Trustees in
Bankruptcy.

/s/ LAFAYETTE J. SMALLPAGE,
Attorney for the Stockton
Morris Plan Company,
a Corporation.

/s/ THEODORE M. MONELL,
Attorney for DeLancey Lewis
and Doris B. Lewis, his wife,
and West Coast Redwood Cor-
poration, a corporation.

/s/ BRYCE SWARTFAGER,
Attorney for Stevenson Farm
Equipment Co.

[Endorsed]: Filed May 27, 1946. Burton J. Wyman, Referee in Bankruptcy.

[Endorsed]: Filed July 11, 1946. C. W. Calbreath, Clerk. [54]

[Title of District Court and Cause.]

PETITION FOR REVIEW OF REFEREE'S
ORDER BY JUDGE

The petition of Paul W. Sampsell, L. Boteler, and Stewart McKee, the trustees in bankruptcy of the estate of the above-named corporation, respectfully represents:

I.

On November 1, 1945, the above-entitled proceeding was commenced in the above-entitled court by the above-named corporation under Chapter XI of the Bankruptcy Act, as amended, for an arrangement between the said corporation and its creditors. On November 15, 1945, in the same case, the said corporation filed its voluntary petition in bankruptcy. Thereafter and on November 19, 1945, the said corporation was duly adjudicated a bankrupt upon said petition, and further proceedings in the case were referred by the court to Benno M. Brink, a Referee in Bankruptcy thereof. On November 20, 1943, Paul W. Sampsell, J. Ray Files, and Stewart McKee were appointed and qualified [55]

by the court as primary receivers in bankruptcy of the estate of the said corporation. Thereafter they acted in that capacity until January 4, 1946. On January 4, 1946, Paul W. Sampsell, L. Boteler, and Stewart McKee were appointed, with the approval of the court, and qualified by the court, as trustees in bankruptcy of the estate of the said corporation, and ever since have been and now are the duly appointed, qualified, and acting trustees in bankruptcy of the said estate.

II.

On November 26, 1945, upon the application of the said primary receivers in bankruptcy, ancillary proceedings in bankruptcy were commenced and thereafter prosecuted in the United States District for the Northern District of California. Thereafter and on November 26, 1945, the said District Court for Northern California appointed and qualified as ancillary receivers in bankruptcy for the Northern District of California, Paul W. Sampsell of Los Angeles and William C. Mikulich of San Francisco. Thereafter the said ancillary receivers in bankruptcy for the Northern District of California continued to act as such until 10:30 a.m. on Monday, February 18, 1946, when their duties as such ancillary receivers in bankruptcy, except to account to said District Court for the Northern District of California for their administration, were terminated, and they were superseded in office by said trustees in bankruptcy. On November 26, 1945, the above-entitled court referred the said ancillary pro-

ceedings to Burton J. Wyman, a Referee in Bankruptcy thereof, and ever since said 26th day of November, 1945, the administration of the estate in the said ancillary proceedings has been and now is pending before the said Burton J. Wyman, Referee in Bankruptcy.

III.

On May 27, 1946 the said Burton J. Wyman signed, filed, and entered herein his order clearing title, determining [56] amounts due under liens, and of sale, with reference to assets of the bankrupt estate commonly known as the Denton-James Sawmill or the Willits Sawmill, located near Willits, Mendocino County, California. In the said order of May 27, 1946, it is provided that on or before a specified time the trustees in bankruptcy, if they desire to retain the said property as assets of the bankrupt estate, shall pay to West Coast Redwood Corporation, a corporation, the sum of \$27,366.70, together with interest thereon at the rate of 4% per annum from October 1, 1945 until paid, the same arising out of a conditional sales contract upon the land of the sawmill held by said West Coast Redwood Corporation, a corporation. The said order of May 27, 1946, also provides that on or before a specified time, the said trustees in bankruptcy, if they desire to retain the said sawmill as an asset of the bankrupt estate, shall pay to DeLancey Lewis and Doris B. Lewis the sum of \$3,748.10, plus interest on the sum of \$1,811.61 at the rate of 6% per annum from August 15, 1945, until paid, the same arising by reason of a conditional sales con-

tract held by the said DeLancey Lewis and Doris B. Lewis upon the machinery and equipment of the said sawmill.

IV.

Each of the said conditional sales contracts contains the following provisions:

“In the event of any action or proceeding being brought by either party hereto to enforce any of the terms hereof, it is further agreed that the prevailing party in such action or proceeding shall be entitled to reasonable attorney’s fees, which shall be fixed by the court and taxed as costs of suit in such action or proceeding.”

In the said order of May 27, 1946, the said Referee allowed Theodore Monell, as attorney for said West Coast Redwood Corporation, a corporation, and said DeLancey Lewis and Doris B. Lewis the sum of \$2,500.00 for his services herein in connection with said conditional sales contracts. [57]

V.

The said portion of the said order clearing title, determining amounts due under liens, and of sale, wherein there was allowed to the said Theodore Monell the said sum of \$2,500.00 for legal services, is erroneous for the following reasons: The amount allowed is excessive and an abuse of discretion on the part of the Referee. The record in this case discloses that, at the time of the making of the said order, only the following services had been performed by the said Theodore Monell as such attorney for his said clients:

1. Prepared, served, and filed a simple answer to the trustees' petition for an order of sale herein. There was not any contest in that proceeding, the order of sale being made by consent.

2. Prepared, and caused to be served and filed, a petition in reclamation, and prepared and caused to be signed and issued by the Referee an order to show cause against the trustees in bankruptcy. There was not any controversy over this petition. The amounts claimed to be due the West Coast Redwood Corporation, a corporation, and DeLancey Lewis and Doris B. Lewis were conceded by the trustees in bankruptcy. The only question in issue was the amount to be allowed Theodore Monell for his legal services.

3. Theodore Monell held conferences with various persons, including his own clients and counsel for the trustees in bankruptcy, in regard to these matters.

Under these circumstances it was error and an abuse of discretion of the Referee to award to Theodore Monell for such services any sum in excess of \$500.00.

Wherefore, petitioners pray for a review by the Judge of that portion of the said Referee's order of May 27, 1946, wherein an allowance was made to the said Theodore Monell of the said sum of \$2,500.00, and that said order be modified to the extent that the allowance be fixed at a sum not to exceed the sum of \$500.00. [58]

Dated: This 29th day of May, 1946.

/s/ PAUL W. SAMPSELL,

/s/ L. BOTELER,

/s/ STEWART McKEE,

Petitioners.

IRVING M. WALKER,

GRAINGER AND HUNT,

By REUBEN G. HUNT,

Attorneys for Petitioners.

State of California,

County of Los Angeles—ss.

Paul W. Sampsell, being first duly sworn, deposes and says:

I am one of the trustees named in the foregoing petition and make this verification for and on behalf of all of the trustees. I have read the foregoing petition and know the contents thereof, and the same is true to the best of my knowledge, information, and belief.

PAUL W. SAMPSELL,

Affiant.

Subscribed and Sworn' to Before me this 29th day of May, 1946.

[Seal] /s/ ESTHER ANDERSON,
Notary Public in and for said County and State.

[Endorsed]: Filed June 5, 1946. Burton J. Wyman, Referee in Bankruptcy.

[Endorsed]: Filed July 11, 1946. C. W. Calbreath, Clerk. [60]

[Title of District Court and Cause.]

CERTIFICATE AND REPORT OF REFEREE
ON TRUSTEES' PETITION FOR REVIEW
OF PORTION OF ORDER, DATED APRIL
15, 1946, CLEARING TITLE, DETERMIN-
ING AMOUNTS DUE UNDER LIENS, AND
OF SALE

To Honorable Michael J. Roche, United States Dis-
trict Judge for the Northern District of Cali-
fornia:

I, Burton J. Wyman, one of the referees in bank-
ruptcy of this court and the referee in charge of
this proceeding, respectfully certify and report
that:

On March 29, 1946, Paul W. Sampsell, L. Boteler
and Stewart McKee, the trustees of the estate of
the above named bankrupt then, and now, pending
in the United States District Court for the South-
ern District of California, filed herein, through their
attorneys, Irving M. Walker, Esq., and Messrs.
Grainger and Hunt, a petition for the sale of certain
real and personal properties known as the "Denton
Sawmill", situated in Mendocino County, Califor-
nia. Among the [61] allegations, in substance, con-
tained in said petition were, and are:

That contained in the assets of the bankrupt is
a sawmill located about ten miles northeast of
Willits, California, comprising real estate, the ma-
chinery and equipment of said sawmill, and other
personal property, purchased partly on contract

from DeLancey Lewis and West Coast Redwood Corporation; that ever since July 27, 1945, and up to the time of the bankruptcy, the bankrupt corporation operated said real and personal properties as a sawmill, through William W. Denton, as trustee; that on November 1, 1945, when the original bankrupt was commenced in the United States District Court for the Southern District of California, as aforesaid, the bankrupt corporation was the owner, and in the actual possession of, said real and personal properties, pursuant to contracts of sale from DeLancey Lewis and Doris B. Lewis, his wife, and West Coast Redwood Lumber Corporation; that since the commencement of said original bankruptcy proceedings, as aforesaid, said sawmill has been operated under the jurisdiction of the bankruptcy court by said William W. Denton for the benefit of the bankrupt estate.

That the interest of the bankrupt estate in said real and personal properties has been appraised at approximately \$42,000.00; that the balance due on said contracts of sale is a little less than \$30,000.00; that in order to realize this apparent equity in said properties it is necessary for the trustees in bankruptcy to sell said properties pursuant to the requirements of Section 47a(1) of the Bankruptcy Act.

That said DeLancey Lewis, Doris B. Lewis, West Coast Redwood Corporation and William W. Denton, claim some right, title, or interest in, or lien upon, the said properties, or some part thereof,

adverse to said trustees in bankruptcy, with respect to the equity in said properties, but that any such claim, or claims, are without right, or foundation, and are subordinate to the claims of said trustees in bankruptcy. [62]

The aforesaid petition concluded, and concludes, in substance, with the prayer:

(1) That an order issue directing said DeLancey Lewis, Doris B. Lewis, West Coast Redwood Corporation and William W. Denton, to appear before the above named District Court for the Northern District of California, to show cause why said properties should not be sold free and clear of liens and claims thereon, or subject to liens and claims; (2) that upon the hearing of said order to show cause, an order be made herein, in conformity therewith; (3) that the trustees in bankruptcy be awarded the costs of this proceeding, and (4) that the trustees in bankruptcy have general relief.

Pursuant to the prayer of said petition, and in compliance therewith, said DeLancey Lewis, Doris B. Lewis, West Coast Redwood Corporation, and William W. Denton, on March 30, 1946, were ordered to appear before the undersigned referee, at his courtroom in the Grant Building, Seventh and Market Streets, San Francisco, California, on April 15, 1946, at 10 a.m., then and there to show cause, why said petition should not be granted and that any of said respondents desiring to plead, answer, or respond to said order to show cause, should serve and file such pleading, answer, or response, at least five days prior to the date of the hearing.

On April 2, 1946, West Coast Redwood Corporation, DeLancey Lewis and Doris B. Lewis, through Theodore M. Monell, Esq., their attorney, filed their petition in reclamation, in which, among other things, it was, and is, averred, in substance:

That said corporation at all times mentioned in said petition for sale was the owner of said sawmill and equipment; that on or about March 22, 1944, said corporation, as seller, entered into a written agreement with William W. Denton and William H. James, as purchasers, for the sale and purchase of said sawmill and equipment for the total sum of \$50,000.00; that by inadvertence said agreement excluded a provision therefrom which was understood and agreed between the parties thereto providing for the payment of the [63] balance of the purchase price of \$50,000.00 not later than October 1, 1945, and that on, or about, April 6, 1944, said corporation executed an addendum to said agreement which was deposited with the Title Insurance and Guaranty Company in San Francisco, with said original agreement, on March 22, 1944, it being understood that the terms of said addendum were binding upon both parties to said agreement; that said corporation is informed and believes that said addendum was in fact executed by said purchasers, and was accepted by them and that said addendum of April 6 and said agreement of March 22 constitute the agreement between the parties; that said agreement,¹ as so modified by said addendum was assigned by said purchasers to

¹See copies of said agreement and addendum, attached hereto as "Exhibit A".

Christ's Church of the Golden Rule, the above named bankrupt.

That said purchasers violated said agreement, and defaulted in the terms thereof, in that said purchasers failed to acquire from Union Lumber Company, as provided by Paragraph 12² of said agreement, the parcels of timber land under option, and allowed said option to expire, thereby materially damaging said corporation and the future operations of said mill; that said purchasers failed to make the payments in accordance with said agreement and the entire balance thereon, amounting to \$27,366.70, together with interest thereon, at the rate of 4% per annum from October 1, 1945, is due, [64] owing and unpaid; that due demand and notice of said default were given to said purchasers and said default has lasted for a period in excess of thirty days after said demand and notice.

That in, and by, the terms and provisions of said

²The above mentioned paragraph 12 reads:

"The undersigned (William W. Denton and William H. James) further agree to acquire from Union Lumber Company, in accordance with the terms of said outstanding option, the property therein specified, provided that said West Coast shall obtain an extension of sixty (60) days for the exercise of the option as to the next additional parcel to be obtained thereunder, in order to have available timber land for the supply of timber to said mill. All properties obtained under such option by the undersigned shall be immediately assigned and transferred to West Coast, so that West Coast may in turn subject the same to the lien of the encumbrance held by said RFC pending final consummation of this agreement, at which time such property shall be transferred to the undersigned."

agreement, and said purchasers did agree that in the event of any action being brought to enforce any of the terms of said agreement by either party, the prevailing party in such action should be entitled to reasonable attorney's fees to be fixed by the court and taxed as part of the costs of suit in such action; that said corporation alleges that a reasonable sum be allowed as attorney's fees herein in the sum of \$3,000.00.

That by the terms of said agreement, the Lewis contract³ later referred to in said petition for reclamation, should be assigned to said corporation as a part of the consideration for the execution of said contract so that, in the event of any default of the purchasers under the Lewis contract, said corporation could protect its rights by paying the balance due to said DeLancey Lewis and wife, and acquire the property covered by said Lewis contract; that said purchasers assigned their interests under said contract aforesaid to said Christ's Church of the Golden Rule, the bankrupt herein, after the defaults hereinbefore mentioned occurred, and said bankrupt took said contracts subject to said defaulted condition thereof and with knowledge of all of the foregoing matters in said petition in reclamation alleged.

That said agreements specifically provided that the purchaser should have no title to any of the property covered by said agreement until the full amount of the purchase price and the interest

³See copy of said agreement, attached hereto as "Exhibit B".

should have been paid; that title was reserved in, and retained by, said corporation until full payment of said purchase price; that all payments made by said purchasers were, according to [65] the terms of said agreements deemed to have been made by them as rental for said property in the event of any default thereunder; that demand has heretofore been made on said bankrupt and the trustees for said bankrupt for the payment of the balance due under said contract, or the return of said property, but they have refused, and do now refuse, to pay said balance, or return said property.

That at all times herein mentioned, said DeLancey Lewis and Doris B. Lewis (in said petition for reclamation thereafter referred to as "Sellers") were the owners of certain parcels of land described in said contract (herein referred to as "Exhibit B") executed by said DeLancey Lewis and Doris B. Lewis, as first parties and sellers, and William W. Denton and William H. James, as second parties; that in, and by, the terms of said agreement, said DeLancey Lewis and Doris B. Lewis did agree to sell said property to said second parties named in said agreement for the sum of \$4,360.00, payable as therein provided⁴; that said second parties de-

⁴\$500.00 upon the execution of said agreement, on February 28, 1944, the balance in seventeen (17) equal monthly installments of \$227.06, or more, plus interest on unpaid principal at the rate of 6% per annum, principal and interest payable in lawful money of the United States, the first day of each and every month, commencing April 1, 1944, until the full purchase price was paid."

faulted in making the payments due under said contract and there is now due, owing and unpaid from said second parties to DeLancey Lewis and his said wife, under said contract, and in accordance with the terms thereof, the sum of \$1811.61, plus interest at the rate of 6% per annum from August 15, 1945.

That said contract further provided that said second parties should keep all the property insured for the benefit of the respective parties in insurance companies satisfactory to the sellers named therein; that said second parties failed to keep and [66] maintain such insurance and said DeLancey Lewis and his said wife, sellers, have been compelled to pay insurance premiums in the sum of \$1807.61, being necessary and reasonable insurance on said property, and also have been forced to pay taxes on said property in the sum of \$128.88 which said second parties did agree to pay and which they failed to pay.

That in, and by, the provisions of said agreement, it was specifically provided that the title to said property was to remain in, and be retained and reserved in sellers, until full payment of said purchase price, and all sums due under said contract, and all additions and improvements to said property, by second parties, immediately should become, and be, the property of said sellers; that demand heretofore has been made on said bankrupt and its trustees for the payment of the balance due under said contract, or the return of said prop-

erty, but they have refused, and now refuse, to pay said balance, or return said property.

That it further is provided by said contract that in the event of any action, or proceeding, being brought by either party to enforce any of the terms thereof, the prevailing party, in such action, should be entitled to reasonable attorney's fees to be fixed by the court and taxed as costs of suit in such action, or proceeding.

That said petitioners allege that the sum of \$500.00 is a reasonable amount to be allowed as attorney's fees herein.

The aforesaid petition in reclamation ends with a prayer (1) that an order be made restoring to West Coast Redwood Corporation full and complete title of property covered by said contract aforesaid, together with all additions thereto and improvements thereof, (2) for a decree by the Bankruptcy Court that said bankrupt has no interest, or estate, or claim, therein, or thereto, or any part thereof, or (3) that said bankrupt pay to said petitioners the full amount due under said contract, together with interest thereon, as in said petition for reclamation alleged, and (4) for a further order [67] restoring to DeLancey Lewis and his said wife, full and complete title to the property referred to in said real estate contract, aforesaid, together with all improvements and additions thereto, (5) that said bankrupt be directed to pay to the latter named petitioners, said sum of \$1811.61, plus interest at 6% from August 15, 1945,

together with the sum of \$1,807.61, covering said expenditures, (6) that said bankrupt further be directed to pay the sum of \$3,500.00 as attorney's fees herein to be fixed as costs in this proceeding, and (7) for such other and further relief as may be meet and proper in the premises.

On April 4, 1946, an order was issued that Paul W. Sampsell, L. Boteler and Stewart McKee, trustees in bankruptcy of the above named bankrupt, appear before the undersigned referee in bankruptcy, at his courtroom in the Grant Building, Seventh and Market Streets, in San Francisco, California, on April 15, 1946, at the hour of 10 a. m., of said day, to show cause why the petition in reclamation should not be granted.

On April 9, 1946, said trustees filed their answer to said petition in reclamation, therein denying all allegations in said petition contained, the verification of said answer having been waived by Theodore M. Monell, Esq., said attorney for said petitioners in reclamation.

On April 15, 1946, said West Coast Redwood Corporation, DeLancey Lewis and his said wife filed their answer to the trustees' said petition for order of sale of said "Denton Sawmill", said last mentioned answer, for the most part being a repetition of the allegations set forth in said petition for reclamation, which said allegations were incorporated in said answer by specific reference thereto.

During the hearing held on April 15, 1946, as is shown by the Reporter's Transcript of said

hearing, pages 49 to 54, thereof, the following occurred: [68]

“Mr. Monell: I have filed this morning the Answer of the West Cost Redwood Corporation and DeLancey Lewis and his wife, to the petition and order to show cause which was in response to our petition in reclamation, as a defense to the petition and order to show cause in this matter.

“The Referee: Where are you going to get on this, Mr. Hunt?

“Mr. Hunt: Well, we have had several propositions offered to us. We have a few parties interested who were to appear in Court this morning. What I would like to do is to have a similar arrangement made as the one we made with the Stevenson Farm Equipment Company, to give us a certain period either to pay the balance due, or return the property to them.

“The Referee: Is that satisfactory?

“Mr. Monell: The only thing is this mill is extremely valuable and this is the vital time for it. In other words, if we get it back we want to be in operation by May. If they operate it, they should be able to pay the balance without difficulty. I take the position Mr. Swartfarger took. I don't want to hamper these people; on the other hand, we have some stockholders who are concerned.

“The Referee: Suppose I allow the same three months for you.

“Mr. Monell: I would think that would be too much time. If they are going to be able to finance

it at all, they should be able to do it, I would say, within forty days.

“Mr. Hunt: How about sixty?

“Mr. Monell: I think that should be time enough.

“Mr. Hunt: That is a short time.

“The Referee: How about fifty days?

“Mr. Hunt: Give us sixty days.

“The Referee: How about fifty days?

“Mr. Monell: That is the trouble. From June we can only [69] operate until about October. Is that right, Mr. Denton?

“Mr. Denton: Year before last we operated until the middle of November.

“Mr. Monell: If we were sure of being paid out, that would be all right. I think it should be easily disposed of, because people are howling to get their lumber. There was a man here this morning on a proposition of advancing all the money for the claims. He was willing to do so and operate so they would have all the output of the mill.

“Mr. Hunt: We meant to have that particular matter before the Court. Is he here?

“Mr. Monell: He left. He had an appointment with Mr. Roche at 11:30. He said he would come this afternoon if you wanted him.

“Mr. Hunt: We can get him back at 2:00 o'clock.

“Mr. Monell: I cannot come back.

“Mr. Hunt: You don't have to come back. We are not in disagreement about the amount.

“Mr. Monell: Now, you have agreed about the amount.

One thing Mr. Denton testified was that no other documents than the bill of sale had been signed. I have a copy of an assignment given me by the title company. Do you know whether or not that assignment was executed?

“Mr. Denton: That was only in regard to the tractor.

“Mr. Hunt: Mr. Denton is referring to the bill of sale. This is another transaction.

“Mr. Monell: The bill of sale was with reference to one piece of property. I don't know whether the assignment was actually executed by the parties in interest or not. This copy was given me by the title company. They were not sure either. Do you know?

“Mr. Denton: This is not signed, no. [70]

“Mr. Hunt: Did you sign it?

“Mr. Denton: I don't think so, no.

“The Referee: I can appreciate, Mr. Hunt, the position they are in on lumber mills.

“Mr. Hunt: Yes, I know. Well, what is Your Honor's suggestion?

“The Referee: Suppose you agree on forty days.

“Mr. Hunt: That would be before the end of May. Make it the first of June; give us a break.

“Mr. Monell: That is satisfactory.

“Mr. M. Dufton: The summer will be over.

“Mr. Monell: The only thing is, if we don't agree on the first of June, it can be tied up in court easily beyond that. It would be more simple to

agree on the first of June and hope it will be liquidated at that time.

“Mr. Hunt: Well, I said the first of June. That is a Saturday. Monday would be the 3rd.

“The Referee: Mr. Hunt, we will stick to the first of June. Counsel is agreeing now.

“Mr. Hunt: That is all right, but probably we would want a hearing on the matter on the 3rd.

“Mr. Monell: That is all right. Let's hope the matter will be determined before that time.

“Mr. Hunt: We hope to do it before that. Are you people willing to make an offer to buy the place?

“Mr. Monell: We don't know what is pending. There might be at that time.

“Mr. Hunt: What do you mean, you don't know what is pending?

“Mr. Monell: What other offers are made.

“Mr. Hunt: We have not received any offers yet. If you want to make an offer, the Court will consider it, naturally. You don't have to do that now, of course.

“The Referee: Now, if we fix it at the 1st of June, can't [71] you and Counsel negotiate as to the amount between now and then?

“Mr. Hunt: Yes.

“Mr. Monell: The order will be entered that either the entire balance due under both contracts be paid by June 1st, or possession surrendered and some reasonable amount of rental for that period of time be paid.

“The Referee: Can you agree on the rental right now?

“Mr. Hunt: Of course, there would not be any rental on the real estate.

“Mr. Monell: Well, the interest probably would be sufficient so far as the real estate is concerned. And the other, I don’t know what a reasonable rental for a family would be.

“Mr. Hunt: I am not so sure about agreeing to a thing like that, Your Honor. The property they will take over is worth approximately twice—it has been appraised at \$42,000.00.

“The Referee: I know, Mr. Hunt, but if they have rights there——

“Mr. Hunt: But there should not be a large rental on that when they are going to take it back June 1st and realize a large amount of what their contracts call for. There is another equitable contract.

“Mr. Monell: I think there is some merit to Mr. Hunt’s statement. I had not thought about the idea that he made here that we will get more than the principal amount plus the interest due by June 1st.

“Mr. Hunt: That is all right.

“Mr. Monell: Then your Honor should fix attorneys fees also in the matter.

“The Referee: How much are you asking?

“Mr. Monell: \$3,500, a little over 10% of the amount involved.

“The Referee: What do you think [72]

“Mr. Hunt: I don’t like to oppose attorneys

fees generally, Your Honor. I believe had he gone through a long litigation that would be all right. Apparently there has been little litigation.

“Mr. Monell: There have been numerous discussions, and the responsibility, of course, of taking a matter involving this amount. I am perfectly willing to let the Court fix it.

“The Referee: \$2,500.

“Mr. Monell: That is satisfactory, Your Honor.

“Now, as I understand, the order will read that on or before June 1st, both these properties will be returned or the entire amount, plus interest at the contract rates, the West Coast Redwood Corporation's being 4%, and the Lewis being 6%, plus \$2,500 attorneys fees, to be paid on or before June 1st.

“The Referee: Submit your order to Mr. Hunt.

“Mr. Monell: Yes.”

Thereafter, on May 27, 1946, the order clearing title, determining amounts due under liens, and of sale, which had been prepared, and was submitted, by Reuben G. Hunt, Esq., one of the attorneys for said trustees, and which said order was “Dated: This 15th day of April, 1946,” was filed herein. Among the findings of fact set forth in the last mentioned document was, and is, the following found on pages 6 and 7 of said order, being numbered “VII”:

“The said conditional sales contracts, wherein West Coast Redwood Corporation, a corporation, and DeLancey Lewis and Doris B. Lewis are the sellers, provide that, in the event of any action be-

ing brought to enforce any of the terms of the said contracts, the prevailing party in such action shall be entitled to reasonable attorney's fees to be fixed by the court and taxes as part of the costs of suit in such action. Theodore M. Monell has acted as counsel for the said West Coast Redwood Corporation, a corporation, and DeLancey Lewis and Doris B. Lewis in commencing [73] and prosecuting a proceeding herein for the enforcement of the terms of the said conditional sales contracts and the reclamation of the property covered thereby. The reasonable value of his legal services in connection therewith is the sum of \$2,500.00."

On pages 8 and 9 of the aforesaid order, in paragraph "III" thereof, and as a part of the "Conclusions of Law", the following appears:

"If the said Trustees in Bankruptcy desire to retain possession of the land and sawmill equipment involved in the said conditional sales contracts of West Coast Redwood Corporation, a corporation, and DeLancey Lewis and Doris B. Lewis, and acquire full title thereto, they must pay West Coast Redwood Corporation, a corporation, on or before June 1, 1946, the sum of \$27,366.70, plus interest thereon at the rate of 4% per annum from October 1, 1945, upon receiving a deed to such real property; and they must also pay DeLancey Lewis and Doris B. Lewis, on or before June 1, 1946, the sum of \$3,748.10, plus interest on the sum of \$1,811.61, at the rate of 6% per annum from August 15, 1945, upon receiving a bill of sale of such personal prop-

erty; and they must also pay the said Theodore M. Monell, on or before June 1, 1946, the sum of \$2,500.00 as attorney's fees in connection with his legal services herein on behalf of the said West Coast Redwood Corporation, a corporation, and DeLancey Lewis and Doris B. Lewis."

In the order proper, pages 10 and 11 thereof, paragraph 5 reads: [74]

"Pay to Theodore M. Monell, on or before June 1, 1946,⁵ as attorney's fees for legal services herein

⁵On May 27, there was filed herein a "Stipulation Re: Willits Sawmill", which, among other things in part, reads:

"It is hereby stipulated and agreed that the said time of June 1, 1946, is hereby extended to June 17, 1946, or, if, in the meantime, an escrow is opened with the said title company for the purpose of consummating a sale or a refinancing scheme, which escrow is satisfactory to the parties, then until the completion of such escrow.

"It is hereby further stipulated and agreed that all parties hereto will cooperate to the end that all necessary documents and papers shall be executed and delivered into such escrow in order that good title to the property shall appear.

"The approximate amount of the said monies so to be paid is \$42,000.00.

"PAUL W. SAMPSELL,

"L. BOTELER and

"STEWART McKEE,

"Trustees in Bankruptcy,

"by GRAINGER & HUNT,

"by REUBEN G. HUNT,

"their attorneys.

"THEODORE M. MONELL,

"Attorney for DeLancey Lewis and Doris B. Lewis, his wife, and West Coast Redwood Corporation, a corporation."

on behalf of said West Coast Redwood Corporation, a corporation, and said DeLancey Lewis and Doris B. Lewis, the sum of \$2,500.00, if the said Trustees in Bankruptcy shall, on or before that date, pay off the balances due to said West Coast Redwood Corporation, a corporation, and DeLancey Lewis and Doris B. Lewis."

Attached to the aforesaid Order Clearing Title, Determining Amounts Due Under Liens, and of Sale, aforesaid, is the following:

"The foregoing Order is hereby approved this day of April, 1946.

"GRAINGER AND HUNT,

"By REUBEN G. HUNT,

"Attorneys for Trustees in
Bankruptcy.

"THEODORE M. MONELL,

"Attorney for DeLancey
Lewis and Doris B. Lewis,
his wife, and West Coast
Redwood Corporation, a
corporation." [75]

On June 5, 1946, the following petition for review was filed with the undersigned referee:

"The petition of Paul W. Sampsell, L. Boteler, and Stewart McKee, the trustees in bankruptcy of the estate of the above-named corporation, respectfully represents:

"I.

"On November 1, 1945, the above-entitled pro-

ceeding was commenced in the above-entitled court by the above-named corporation under Chapter XI of the Bankruptcy Act, as amended, for an arrangement between the said corporation and its creditors. On November 15, 1945, in the same case, the said corporation filed its voluntary petition in bankruptcy. Thereafter and on November 19, 1945, the said corporation was duly adjudicated a bankrupt upon said petition, and further proceedings in the case were referred by the court to Benno M. Brink, a Referee in Bankruptcy thereof. On November 20, 1945, Paul W. Sampsell, J. Ray Files, and Stewart McKee were appointed and qualified by the court as primary receivers in bankruptcy of the estate of the said corporation. Thereafter they acted in that capacity until January 4, 1946. On January 4, 1946, Paul W. Sampsell, L. Boteler, and Stewart McKee were appointed, with the approval of the court, and qualified by the court, as trustees in bankruptcy of the estate of the said corporation, and ever since have been and now are the duly appointed, qualified, and acting trustees in bankruptcy of the said estate.

“II.

“On November 26, 1945, upon the application of the said primary receivers in bankruptcy, ancillary proceedings in bankruptcy were commenced and thereafter prosecuted in the United States District Court for the Northern District of California. Thereafter and on November 26, 1945, the said District Court for Northern California appointed and

qualified as ancillary receivers in bankruptcy for the Northern District of California, Paul W. [76] Sampsell of Los Angeles and William C. Mikulich of San Francisco. Thereafter the said ancillary receivers in bankruptcy for the Northern District of California continued to act as such until 10:30 a. m. on Monday, February 18, 1946, when their duties as such ancillary receivers in bankruptcy, except to account to said District Court for the Northern District of California for their administration, were terminated, and they were superseded in office by said trustees in bankruptcy. On November 26, 1945, the above-entitled court referred the said ancillary proceedings to Burton J. Wyman, a Referee in Bankruptcy thereof, and ever since said 26th day of November, 1945, the administration of the estate in the said ancillary proceedings has been and now is pending before the said Burton J. Wyman, Referee in Bankruptcy.

“III.

“On May 27, 1946, the said Burton J. Wyman signed, filed, and entered herein his order clearing title, determining amounts due under liens, and of sale, with reference to assets of the bankrupt estate commonly known as the Denton-James Sawmill or the Willits Sawmill, located near Willits, Mendocino County, California. In the said order of May 27, 1946, it is provided that on or before a specified time the trustees in bankruptcy, if they desire to retain the said property as assets of the bankrupt estate, shall pay to West Coast Redwood Corpora-

tion, a corporation, the sum of \$27,366.70, together with interest thereon at the rate of 4% per annum from October 1, 1945, until paid, the same arising out of a conditional sales contract upon the land of the sawmill held by said West Coast Redwood Corporation, a corporation. The said order of May 27, 1946, also provides that on or before a specified time, the said trustees in bankruptcy, if they desire to retain the said sawmill as an asset of the bankrupt estate, shall pay to DeLancey Lewis and [77] Doris B. Lewis the sum of \$3,748.10, plus interest on the sum of \$1,811.61 at the rate of 6% per annum from August 15, 1945, until paid, the same arising by reason of a conditional sales contract held by the said DeLancey Lewis and Doris B. Lewis upon the machinery and equipment of the said sawmill.

“IV.

“Each of the said conditional sales contracts contains the following provisions:

“ ‘In the event of any action or proceeding being brought by either party hereto to enforce any of the terms hereof, it is further agreed that the prevailing party in such action or proceeding shall be entitled to reasonable attorney’s fees, which shall be fixed by the court and taxed as costs of suit in such action or proceeding.’

In the said order of May 27, 1946, the said Referee allowed Theodore Monell, as attorney for said West Coast Redwood Corporation, a corporation, and said DeLancey Lewis and Doris B. Lewis the sum

of \$2,500.00 for his services herein in connection with said conditional sales contracts.

“V.

“The said portion of the said order clearing title, determining amounts due under liens, and of sale, wherein there was allowed to the said Theodore Monell the said sum of \$2,500.00 for legal services, is erroneous for the following reasons: The amount allowed is excessive and an abuse of discretion on the part of the Referee. The record in this case discloses that, at the time of the making of the said order, only the following services had been performed by the said Theodore Monell as such attorney for his said clients:

“1. Prepared, served, and filed a simple answer to the trustees’ petition for an order of sale herein. There was not any contest in that proceeding, the order of sale being made by consent.

“2. Prepared, and caused to be served and filed, a petition in reclamation, and prepared and caused to be signed and issued by the Referee [78] an order to show cause against the trustees in bankruptcy. There was not any controversy over this petition. The amounts claimed to be due the West Coast Redwood Corporation, a corporation, and DeLancey Lewis and Doris B. Lewis were conceded by the trustees in bankruptcy. The only question in issue was the amount to be allowed Theodore Monell for his legal services.

“3. Theodore Monell held conferences with

various persons, including his own clients and counsel for the trustees in bankruptcy, in regard to these matters.

Under these circumstances it was error and an abuse of discretion of the Referee to award to Theodore Monell for such services any sum in excess of \$500.00.

“Wherefore, petitioners pray for a review by the Judge of that portion of the said Referee’s order of May 27, 1946, wherein an allowance was made to the said Theodore Monell of the said sum of \$2,500.00, and that said order be modified to the extent that the allowance be fixed at a sum not to exceed the sum of \$500.00.

“Dated: This 29th day of May, 1946.

“/s/ PAUL W. SAMPSELL,

“/s/ L. BOTELER,

“/s/ STEWART McKEE,

“Petitioners.

IRVING M. WALKER,

GRAINGER AND HUNT,

“By REUBEN G. HUNT,

Attorneys for Petitioners.”

(Verification omitted for sake of brevity.) [79]

DISCUSSION BY, AND OPINION OF, REFEREE

While it seldom is possible for a court to measure the value of an attorney’s services with any degree of mathematical certainty, I never, of late years, have been called upon to evaluate such services that

I did not recall the opinion of Woolsey, District Judge, in *re Osofsky* (D.C., N.Y.) 50 F. (2d) 925, wherein, at page 927, the learned judge declared:

“The elements to be considered in determining an attorney’s fee were once most aptly summarized in evidence given on a reference by Honorable William G. Choate, formerly a judge of this court, and David B. Ogden, Esq., a well-known lawyer of a generation ago.

“They laid down the following elements as being matters properly to be considered when the fees of an attorney have not been agreed on beforehand, but are to be fixed: (1) The time which has fairly and properly to be used in dealing with the case; because this represents the amount of work necessary. (2) The quality of skill which the situation facing the attorney demanded. (3) The skill employed in meeting that situation. (4) The amount involved; because that determines the risk of the client and commensurate responsibility of the lawyer. (5) The result of the case, because that determines the real benefit to the client. (6) The eminence of the lawyer at the bar, or in the specialty in which he may be practicing.

“Each case, of course, differs to some extent from every other case in respect of the importance of these several elements.

“In some cases the time element is dominant; in others the skill used seems specially to stand out; and in others still, the amount which a defendant has been saved, or which a plaintiff has

recovered, may be the dominating consideration in the charge. But if all these elements are considered together, and the relative importance of each element is fairly weighed by an attorney, it is possible to arrive at a proper charge in almost any case without much [80] difficulty."

However, in the case here under consideration, I quickly came to the conclusion that some of the yard-sticks suggested for use in the Osofsky and other similar proceedings could be of little, if any, aid to me, because of the peculiar sets of facts and circumstances involved, inasmuch as the interested attorney was not before the court representing a trustee in bankruptcy, a bankrupt, or any creditor there of, but that his position before the court was that of a legal representative of sellers under conditional contracts of sale,¹ in connection with which sales the purchasers were in absolute default and their assignee, the bankrupt herein, at the time of bankruptcy, was without legal rights, in connection with the properties in controversy.

"Under the law of California," said the United States District Court for the Northern District of California, *In re Ideal Laundry Inc.*, 10 F. Supp. 719, 720, "conditional contracts of sale are valid. They are recognized to the fullest extent, and the Supreme Court has announced that 'even bona fide

¹"... in ... California the relationship between the buyer and seller under a conditional sales contract is not that of debtor and creditor." *Fageol Truck & Coach Co. v. Pacific Indemnity Co.* (S. Ct., Calif.) 117 P. (2d) 661, 668, 18 C. (2d) 731, 745.

purchasers from the person to whom personal property is delivered under an executory contract of sale get no valid claim to the property.' See *Van Allen v. Francis*, 123 Cal. 474, at page 477, 56 P. 339, 340.

"It follows, therefore, that the property in question is that of petitioner; it remains the owner, and as such it cannot without its consent be deprived of the property. It is not a creditor, but it is, under the law of California, the absolute owner of the property under the express reservation of title. Consequently, the provisions of the Bankruptcy Act applicable to creditors are not pertinent, but the rights of petitioner are to be determined by the principles of law governing the rights of owners of property. The [81] court cannot, therefore, deal with the petitioner's property in such manner as to deprive it of the same, and there must be an order granting the petition and permitting petitioner to reclaim its property."

In the proceeding under examination, the petitioners, by and through, the attorney whose allowance now is under attack, has filed their petition in reclamation, but through said attorney, however, and as the result of his advice and good judgment, said petitioners, from the very beginning of the litigation, has shown a disposition to cooperate with the trustees in their efforts to create assets out of reclaimable properties where, in law, no such assets, up to the time of such co-operation, existed. Thus it was that, in fixing the amount of fees, as I did, I

took into consideration that if the attorney for the reclamation petitioners had advised his clients to "sit tight", as he well might have done upon the authority of the Ideal Laundry case, and to rest entirely on their legal rights under California law, by which their rights necessarily would have had to be determined,² if the fine spirit of co-operation on the part of said attorney and his clients had not prevailed, the court would have had to follow the ruling In re Ideal Laundry, Inc., *supra*. Had the latter situation arisen, the bankrupt's estate would have been deprived of valuable properties, as hereinafter pointed out. I, therefore, concluded that in advising his clients to deal generously with the estate on a purely equitable basis, rather than a strictly legal basis, and thus lending his aid toward the creation of valuable assets where these particular assets, so far as this bankrupt's estate is concerned, otherwise, were non-existent, the legal services rendered by said attorney was reasonably worth the sum of \$2500.00. In other words, I look thus upon the situation presented. [82]

Without the attorney's co-operation and had he insisted that the court deal with the properties involved entirely on the hard-and-fast legal basis of reclamation, the estate, based upon the appraised value,³ would have lost more than \$40,000.00 in

²In re Hager (D.C., Ia.) 166 F. 972, 974.

³Later, according to the record to which the court has the right to look, *Dimmick v. Tompkins*, 194 U.S. 540, 548, 24 S. Ct. 780, 782, 48 L. Ed. 1110,

assets, together with a reasonable attorney's fee for carrying through the reclamation matter. Inasmuch as the attorney's co-operation so served to enrich the estate, as aforesaid, I felt that, in justice to all concerned, I should apply one of the very old rules of jurisprudence, "He who takes the benefit must bear the burden."

The estate had benefited to the extent of in excess of \$40,000.00 and had so benefited because of said attorney's efforts. Surely, I reasoned, that since the estate directly has, and those interested therein indirectly have, gained out of nothing such a large amount of assets, no interested party justly can complain if the one who legally, and without criticism, could have prevented such gain, is amply paid for so using his legal ability and good judgment equitably to benefit the bankrupt's estate, without equitably denying to his clients that which is due them, considering the matter solely from an equitable standpoint, as should a court which—as does a bankruptcy court—operates on equitable principles.⁴ [83]

1114, *Freshman v. Atkins*, 269 U.S. 121, 124, 46 S. Ct. 41, 42, 70, L. Ed. 193, 195, *Bowe-Burke Mining Co. v. Willcutts* (D.C., Minn.) 45 F. (2d) 394, 395, these properties were sold for \$52,000.00.

4" . . . the bankruptcy court may dispose of matters which come before it, upon equitable principles, when justice and equity require that it should do so." *In re Larkey* (D.C., N.J.) 214 F. 867, 871, 872.

Bankruptcy courts are "essentially courts of equity, and their proceedings inherently proceedings in equity." *Local Loan v. Hunt*, 292 U.S. 234, 240, 54 S. Ct. 695, 78 L. Ed. 1230; *Pepper v. Litton*, 308 U.S. 295, 304, 60 S. Ct. 238, 84 L. Ed. 281.

PAPERS HANDED UP HEREWITH

I hand up herewith the following papers:

1. Petition for an Order of Sale (Denton Sawmill);
2. Order to Show Cause (Denton Sawmill);
3. Petition in Reclamation;
4. Order to Show Cause and Setting Day of Hearing;
5. Answer of Trustees in Bankruptcy to Petition in Reclamation of DeLancey Lewis, et al.;
6. Answer of West Coast Redwood Corporation and DeLancey Lewis and Doris B. Lewis to Petition for an Order of Sale (Denton Sawmill);
7. Return of Sale of Real and Personal Property;
8. Stipulation re Willits Sawmill;
9. Order Clearing Title, Determining Amounts Due under Liens, and of Sale; and
10. Petition for Review of Referee's Order by Judge.

Dated: July 11, 1946.

Respectfully submitted,

/s/ BURTON J. WYMAN,

Referee in Bankruptcy. [84]

EXHIBIT A

“The undersigned, William W. Denton and William H. James, both of Oakland, California, hereby offer to purchase from West Coast Redwood Corporation, a corporation, hereinafter called ‘West Coast’, all of that certain sawmill equipment, including all saws, machinery and other necessary tools for use in connection with the operation of said mill, more specifically set forth in that inventory thereof prepared by the undersigned, together with those three certain forty acre tracts of land purchased by the undersigned from Union Lumber Company, and including the existing option covering six additional forty acre tracts of land, which option is contained in letter addressed to said West Coast and dated May 3, 1943, and filed with Reconstruction Finance Corporation, hereinafter called ‘RFC’, in connection with the loan of said RFC to said West Coast.

“1. The undersigned offer to purchase all of the foregoing, being all of the physical assets of said West Coast, for the total sum of fifty thousand (50,000.00) dollars. The undersigned agree to pay said sum in the following manner:

“(a) By delivery to West Coast of a bankable promissory note in the sum of forty-five hundred (4500.00) dollars, payable on or before six (6) months from date, on which note said West Coast shall be able to realize said sum of forty-five hundred dollars without discount in order to enable it to pay said amount to RFC under its aforesaid

loan. Said note shall be delivered on execution hereof.

“(b) On the same date, the further sum of eighteen hundred twenty-two and 92/100 (1822.92) dollars, plus interest from December 27, 1943, to the Collector of Internal Revenue on account of the liability of West Coast for withholding taxes withheld from employees of West Coast;

“(c) The balance by delivering to West Coast one-half the entire output of lumber and other forest products from said mill and property for a period of six months from and after the date hereof, provided, however, that the undersigned agree to either pay in cash or in such lumber and forest products an amount sufficient to satisfy the requirements of said RFC loan to said West Coast, as a minimum monthly payment hereunder. If, at the expiration of said period of six months, the undersigned should decide to abandon operations, there shall be no obligation on them, or either of them, hereunder, save and except for one-half of the output of said mill and property or said minimum requirement of said RFC to the date of such abandonment (whichever amount may be larger), and in such event said West Coast shall have full and unimpaired title to all of the property herein agreed to be conveyed, together with such additions and improvements as the undersigned may have installed. The undersigned hereby specifically agree that all additions, replacements and improvements installed upon said property shall immediately be-

come and be the property of said West Coast subject to the terms hereof. In lieu of the delivery of said one-half of said entire output, the undersigned may pay in cash the value thereof after satisfying said West Coast as to such value. In no event shall the monthly payments hereunder be less than the amount due R.F.C. under its loan. [85]

“The decreasing balance of said purchase price of fifty thousand (50,000.00) dollars shall bear interest at the rate of four (4) per cent per annum, and the payments shall be applied first to interest unpaid and balance toward principal.

“2. The undersigned further agree to improve said mill, by the addition of work, labor and materials, in a minimum value of three thousand (3000.00) dollars, and to have available sufficient operating capital in order to properly carry on the operations of said mill.

“3. The undersigned further agree that none of their rights hereunder shall be assignable, except to Christ's Church of the Golden Rule without the written consent of West Coast first had and obtained.

“4. The undersigned further agree to acquire from DeLancey Lewis and Doris B. Lewis, two hundred eight-six (286) acres of land in Mendocino County, together with timber and water rights, at a price of forty-three hundred sixty (4360.00) dollars, ten acres of which shall consist of the millsite upon which the mill of said West Coast is now

located and which is now subject to a lease from said DeLancey Lewis and Doris B. Lewis to said West Coast. Said contract of purchase shall be assigned to said West Coast to be held by it as security hereunder for the performance of the obligations of the undersigned, with the understanding that said West Coast may further assign said contract of RFC as further security for its advances to West Coast. All of said assignments shall be held in escrow by Title Insurance & Guaranty Company for the account of all interested parties.

“5. In the event of any default hereunder on the part of the undersigned in making any payment herein provided, and the continuance of such default for a period of thirty (30) days from and after written notice by West Coast to the undersigned, the undersigned shall surrender all rights hereunder and all right, title and interest of the undersigned in and to the property herein agreed to be conveyed, together with the improvements, additions, betterments and replacements installed by the undersigned, to said West Coast free of any obligation hereunder and from any claim of the undersigned.

“6. In the event of the acquisition of said property from DeLancey Lewis and Doris B. Lewis, as hereinbefore provided, there shall be no rental charged against West Coast for the use of said property so acquired or any thereof, and in the event of any subsequent default of the undersigned

hereunder such property so acquired from DeLancey Lewis and Doris B. Lewis shall be subject to the lien of said loan from said RFC to said West Coast as though said property was owned by said West Coast.

“7. The undersigned shall conduct all operations of said mill property at their own cost and expense and under their own name or names, or a name selected by them not similar to the name of said West Coast, and without any obligation or responsibility whatsoever on the part of West Coast, and the undersigned agree to carry complete and adequate insurance to protect the interests [86] of West Coast in connection with the operation of said mill by the undersigned.

“8. The undersigned further agree to maintain and carry any and all insurance required to be kept by the terms of the loan to West Coast by RFC, insuring the interests of all parties as they may appear, and all insurance premiums shall be pro rated to the date of the execution hereof.

“9. It is further understood that the undersigned shall have no title to any of the property hereinbefore mentioned until the full amount of said purchase price of fifty thousand (50,000.00) dollars and interest shall have been paid to West Coast as herein provided, at which time proper deeds and bills of sale shall be delivered to the undersigned.

“Deeds and bills of sale shall be prepared and

executed by West Coast and delivered in escrow to Title Insurance and Guaranty Company in San Francisco, subject to delivery upon complete performance in accordance with the terms hereof.

“10. In the event of any action being brought to enforce any of the terms hereof by either party, it is further agreed that the prevailing party in such action shall be entitled to reasonable attorney’s fees to be fixed by the court and taxed as part of the costs of suit in such action.

“11. It is expressly understood that in the event of any default of the undersigned, as herein before provided, all payments theretofore made by them hereunder to West Coast or for its account, or in the acquisition of or payment for any improvements, additions or betterments, shall be deemed to be rental for the use of the property covered hereby, and that, upon the termination of the rights of the undersigned hereunder by reason of such default, all rights of the undersigned to any sums so paid for such additional property, improvements or betterments, shall cease and terminate.

“12. The undersigned further agree to acquire from Union Lumber Company, in accordance with the terms of said outstanding option, the property therein specified, provided that said West Coast shall obtain an extension of sixty (60) days for the exercise of the option as to the next additional parcel to be obtained thereunder, in order to have available timber land for the supply of timber to said mill. All properties obtained under such

option by the undersigned shall be immediately assigned and transferred to West Coast, so that West Coast may in turn subject the same to the lien of the encumbrance held by said RFC pending final consummation of this agreement, at which time such property shall be transferred to the undersigned.

“13. West Coast shall have at all time the right to enter the premises covered by this agreement to inspect the same and to examine the books, papers and records of the undersigned, relative to their operation of any business conducted by them, on the premises covered hereby.

“14. The undersigned agree to keep full, true and accurate books of account reflecting the business operations of said mill property, showing completely and truly all of the timber and other products cut or removed or manufactured from or on said premises. [87]

“15. The undersigned agree that they shall not remove from the premises covered hereby, or any property added hereto, any of the improvements, tools, equipment (excluding motor-vehicles or live-stock) or buildings of any kind or character, without the written consent of West Coast first had and obtained.

“16. Performance of all of the terms hereunder is subject to any delays caused by acts of war, acts of God, strikes, lockouts or any other cause beyond the control of either of the parties hereto.

“17. West Coast shall take care of and satisfy

all of its outstanding obligations and indemnify and hold harmless the undersigned for all damages, loss, cost and expensed occasioned by reason of any failure of West Coast to pay any of its obligation, subject to the terms hereof.

“18. Any notice required hereunder to be given to the undersigned shall be mailed by United States registered mail, with return receipt requested, addressed to either or both of the undersigned, with postage fully prepaid thereon at Willits, California. Any notice required hereunder to be given to West Coast shall be mailed by United States registered mail, with return receipt requested, addressed to said West Coast Redwood Corporation, in care of Theodore M. Monell, 1085-7 Mills Building, San Francisco, 4, California.

“In Witness Whereof, the undersigned have hereunto subscribed their names this 28th day of February, 1944.

“WILLIAM W. DENTON,

“WILLIAM H. JAMES.

“The foregoing offer is hereby accepted. March 22, 1944.

“WEST COAST REDWOOD
CORPORATION,

“By A. R. PETTEY,
President,

“And THEODORE M. MONELL,
Assistant Secretary.” [88]

“This Agreement, made and entered into this 6th day of April, 1944, by and between William W. Denton and William H. James, both of Oakland, California, and West Coast Redwood Corporation, a corporation,

Witnesseth

“Whereas, said William W. Denton and William H. James did, under date of February 28, 1944, make a written offer to said West Coast Redwood Corporation, a corporation, to purchase its sawmill, which offer was accepted under date of March 22, 1944; and

“Whereas, said offer and acceptance does not express the full intentions of the parties in that it omits any provision for the payment of the balance of the purchase price in the event that the undersigned continue the operation of said mill;

“Now, Therefore, It Is Understood and Agreed that said offer and acceptance may be modified to add thereto as sub-paragraph ‘(d)’ of paragraph ‘1’, the following:

‘(d) The balance of said purchase price of fifty thousand (50,000.00) dollars, in the event the undersigned continue with the operation of said mill property and do not decide to abandon operations as hereinbefore provided, by delivering to West Coast one-half the entire output of lumber and other forest products from said mill and property, as the same are cut and acquired by the undersigned until the entire balance of said purchase price to-

gether with interest thereon shall have been fully paid. Provided, however, that the monthly payments hereunder, after payment in full of said RFC obligation, shall not be less than the sum of two thousand (2000.00) dollars per month, and the entire balance of said purchase price shall be fully paid to West Coast not later than October 1, 1945.

“It is further understood that all cut timber on said premises may be cut and manufactured into lumber by the undersigned pursuant to the terms hereof.”

“WILLIAM W. DENTON,

“WILLIAM H. JAMES.

“WEST COAST REDWOOD
CORPORATION,

“By A. T. PETTEY,

“And THEODORE M. MONELL.”

EXHIBIT B

“Memorandum of Agreement, made and entered into this 28th day of February, 1944, by and between DeLancey Lewis and Doris B. Lewis, his wife, of San Mateo County, California, hereinafter called ‘First Parties’, and William W. Denton and William H. James, both of Oakland, California, hereinafter called ‘Second Parties’,

“Witnesseth

“Whereas, First Parties are the owners of certain properties hereinafter described, a portion of

which is the millsite on which the mill of West Coast Redwood Corporation is presently situated; and

“Whereas, Second Parties desire to purchase said property for the total sum of forty-three hundred sixty (4360.00) dollars, on the terms and conditions hereinafter set forth; and

“Whereas, Second Parties are, under even date herewith, entering into an option agreement covering the purchase of certain mill equipment and property of West Coast Redwood Corporation; and

“Whereas, said DeLancey Lewis is an insurance broker, and First Parties are willing to sell said property to Second Parties in accordance with the terms hereof, including the right to act as exclusive insurance broker for Second Parties as herein provided,

“Now, Therefore, It Is Hereby Understood and Agreed, by and between the respective parties hereto, as follows:

“1. First Parties hereby agree to sell, assign, transfer and convey unto Second Parties the following described property situated in the County of Mendocino, State of California, to-wit:

“Parcel One: Lot 2, Section 30, Township 19 North, Range 14 West, M.D.B. & M.

“Parcel Two: Southwest $\frac{1}{4}$ or Southeast $\frac{1}{4}$ of Section 10, Township 19 North, Range 14 West, M.D.B. & M.,

“Parcel Three: All that certain property described in a deed from First Parties to Geo. J. Stempel, et ux., recorded in Book 163 of Official Records, as an exception of 208 acres not included in the granting clause of said deed.

“2. First Parties agree to sell said property, together with all timber and water rights owned by First Parties, to Second Parties for the total sum of forty-three hundred sixty (4360.00) dollars, payable as follows:

“Five Hundred (500.00) dollars upon the execution hereof, receipt whereof is hereby acknowledged by First Parties, and the balance in seventeen (17) equal monthly installments of two hundred twenty-seven and 06/100 (227.06) dollars, or more, plus interest on the unpaid principal at the rate of six (6) per cent per annum, principal and interest payable in lawful money of the United States, on the 1st day of each and every month commencing April 1, 1944, until the full purchase price shall have been paid. [90]

“3. Sellers agree, upon payment in full for said property, to transfer the same free and clear of all liens and encumbrances, excepting easements of record, to Second Parties, together with all improvements now on said property

“4. Second Parties promise and agree to pay said sums aforesaid at the times and in the manner above set forth, and further agree to pay all taxes and assessments charged against said property until Second Parties shall have paid in full therefor.

“5. Second Parties further agree to keep the improvements on said property in good order, condition and repair, and to keep the same insured for the benefit of the respective parties hereto, as their interests may appear, in insurance companies satisfactory to First Parties.

“6. Second Parties agree that all improvements installed by them on said premises, excepting movable fixtures, shall immediately become part of the realty and belong to First Parties and that Second Parties shall have no interest therein or claim thereto, or any part thereof, until payment in full of all sums due from them hereunder.

“7. Second Parties further hereby appoint said DeLancey Lewis as their exclusive insurance broker, for a period of five years from and after the date hereof, to handle for them the placing of all insurance required or carried in connection with the operation of said saw mill and property and agree that no other agent or broker shall act for them, or either of them during said period, and that all insurance carried in connection with said business shall be placed through said DeLancey Lewis and not otherwise handled or placed. Provided, however, that said DeLancey Lewis shall at all times use his best efforts to effect such economies in the placing of such insurance as any other prudent insurance broker would under like circumstances.

“8. First Parties further agree to execute a deed for the property hereinbefore described to Second Parties and to deposit such deed with Title Insurance and Guaranty Company, in San Francisco, with

instructions to deliver same upon payment in full of all sums due hereunder to First Parties.

“9. In the event of any action or proceeding being brought by either party hereto to enforce any of the terms hereof, it is further agreed that the prevailing party in such action or proceeding shall be entitled to reasonable attorney’s fees, which shall be fixed by the court and taxed as costs of suit in such action or proceeding.

“In Witness Whereof, the parties heretofore have executed this agreement the day and year first herein written.

“DeLANCEY LEWIS,

“DORIS B. LEWIS,

First Parties.

“WILLIAM W. DENTON,

“WILLIAM H. JAMES,

Second Parties.”

[Endorsed]: Filed July 11, 1946. C. W. Calbreath, Clerk. [91]

Law Offices of Grainger and Hunt

Sept. 16, 1946.

Hon. Michael J. Roche.,

U. S. Courthouse Bldg.,

7th and Mission Sts.,

San Francisco

Dear Judge Roche:

in re Christ’s Church of the Golden

Rule, bankrupt No. 36,408-R

Now that the court has granted, by consent, the trustees’ motion for an order clarifying and dis-

regarding an approval of the order of Referee in Bankruptcy Wyman, dated May 27, 1946, wherein he awarded the sum of \$2500.00 to attorney Theodore Monell as attorney's fees for legal services in connection with his representation of the holders of conditional sales contracts upon property of the bankrupt estate in proceedings before the Referee, the only matter left for determination, and on its merits, is the trustees' petition for a review of that order. This petition came on for hearing on July 29th last, at which time the court made an order submitting the matter upon briefs. At that time the trustees filed their opening brief. Today Mr. Monell presented a reply to that brief in the form of "Consent to order clarifying approval of order and motion supporting referee's order fixing attorney's fee re Denton-James Sawmill". The trustees will not file any answer to this reply.

The petition for review of the referee's order stands submitted to you for decision upon the following papers:

1. The trustees' petition for review.
2. The referee's certificate on review.
3. The trustees' opening brief.
4. The reply thereto of Theodore Monell (Consent to order clarifying approval of order and motion supporting referee's order fixing attorney's fee re Denton-James Sawmill).
5. This letter.

This morning, based upon information furnished to me by the title company handling the escrow in

connection with the sale of the Denton-James (Wil-lits) Sawmill. I stated to you in open court that, if the \$2500 fee was allowed to Mr. Monell, the bankrupt estate would receive a net of about \$3800 from the transaction. After checking again with the title company, I find that this statement was erroneous. It left out of consideration the original deposit of \$5200.00 with the trustees by the purchasers. If the \$2500 fee is allowed, the estate will received a total of \$8919.19, instead of \$3800.00. In other words the maximum available from the transaction for the final amount allowed Mr. Monell, and for the estate, is about \$11,500.00. In the trustees' brief it is stated that the maximum would be about \$12,000.00.

I am sending a copy of this letter to Mr. Monell.

Very truly yours,

REUBEN G. HUNT.

(Affidavit of Clerk attached.)

[Title of District Court and Cause.]

NOTICE OF MOTION FOR ORDER CLARIFY-
ING APPROVAL CONTAINED IN REF-
EREE'S ORDER NOW ON REVIEW AND
DIRECTING THAT SUCH APPROVAL
BE DISREGARDED ON THE REVIEW

To. Theodore M. Monell:

You Will Please Hereby Take Notice that on Monday, September 16, 1946, at 10:00 a.m., at the court room of the above entitled court, in the United States Courthouse Building, 7th and Mission

Streets, San Francisco, California, Division of Judge Michael J. Roche thereof, Paul W. Sampsell, L. Boteler, and Stewart McKee, the Trustees in Bankruptcy of the Estate of the above named bankrupt corporation, will move said court for an order clarifying and disregarding the stipulation in the form of an approval in writing by Reuben G. Hunt, one of the counsel for said Trustee, at the end of the order made and entered herein on May 27, 1946, by Burton J. Wyman, a Referee in Bankruptcy of the court, entitled: "Order Clearing Title, Determining Amount Due Under Liens, and of Sales," and relating to the disposition of a sawmill which was an asset of the bankrupt estate and located near Willits, Mendocino County, California, in so far as said order relates to the award of \$2500.00 attorney's fees to Theodore Monell. The purpose of the motion is [93] to clarify the approval so that it will be deemed an approval as to form only, and not an approval as to substance, and not a consent to the award of attorney's fees or a waiver of the right to have such award reviewed by a judge of the court; and, when so clarified, to have such approval disregarded in connection with the review herein of the referee's said order so that such review may be considered on its merits by the judge, irrespective of any such approval.

The motion will be based upon all the pleadings, papers, records and files herein, this notice of motion, the Affidavits of Reuben G. Hunt and the three Trustees in Bankruptcy hereto attached and

made a part hereof, and the points and authorities served and filed concurrently herewith.

The motion will be made upon the following grounds:

1. If said approval is to be construed as the consent by said counsel, on behalf of the Trustee in Bankruptcy, of an award to Theodore M. Monell of \$2500.00 attorney's fees, and a waiver of the right of said Trustees to have said award reviewed by a judge of this court, then such approval is void because said Trustees' counsel never had express authority to give such consent on their behalf, and any such consent would be contrary to, and in violation of, their express instructions to their said counsel to have said award reviewed by a judge of this court.

2. If said approval is to be construed as an agreement between counsel for the award to Theodore Monell of the said attorney's fees, such agreement is void under the provisions of The Borah Act of August 25, 1937, 28 USC, Secs. 572a and 531.

3. If said approval is to be construed as an agreement between Theodore Monell and the Trustees in Bankruptcy for the award to Theodore Monell of said attorney's fees, such agreement is void under the provisions of The Borah Act of August 25, 1937, 28 USC, Secs. 572a and 531. [94]

4. The said Reuben G. Hunt, in preparing and signing said approval, never intended other than to approve, on behalf of the Trustees, the said order

as reflecting the form which the referee directed to be prepared, and never intended to approve on behalf of the Trustees, or otherwise, the substance of the said order, or to consent to the award of said attorney's fees, or to waive the right of the Trustees to have said award reviewed by a judge of this court, for the reason that said Reuben G. Hunt had previously been expressly instructed by said Trustees to take the proper steps at the proper time to have the said award reviewed by a judge of this court.

5. Any such consent, even though valid, would not be binding upon the judge of this court, because the judge may, at any time before the close of this case, and upon his own motion, and without petition, review an administrative order of a referee such as the allowance of compensation.

6. The granting of said motion will not prejudice said Theodore Monell and will place him in the same position he was before the approval was signed.

7. In so far as the said approval does not indicate that it is intended as to form only, and not as to substance, and that it was not intended as a consent to the award of attorney's fees, or as a waiver of the right to a review by the judge of the court of such award, such uncertainty is due to the mistake, inadvertence, surprise and excusable neglect of Trustees' counsel from which he and the Trustees should be relieved in the interests of justice and the protection of the interests of the creditors

of the bankrupt estate, since the amount finally awarded must be paid out of the bankrupt estate.

Dated this 5th day of August, 1946.

IRVING M. WALKER,
GRAINGER AND HUNT,

By /s/ REUBEN G. HUNT,

Attorneys for Trustees. [95]

AFFIDAVIT OF REUBEN G. HUNT

State of California,

County of Los Angeles—ss.

Reuben G. Hunt, being first duly sworn, deposes and says:

I am a member of the Law Firm of Grainger & Hunt, of Los Angeles, the other member being Kyle Z. Grainger. On or about January 10, 1946, with the approval of the court, the said firm was employed as general counsel, together with Irving M. Walker, of Los Angeles, by Paul W. Sampsell, L. Boteler and Stewart McKee, the Trustees in Bankruptcy of the Estate of Christ's Church of the Golden Rule, a corporation.

The bankruptcy was commenced November 1, 1945, in the United States District Court for the Central Division of the Southern District of California, as the court of primary jurisdiction. On November 27, 1945, ancillary proceedings in bankruptcy in aid of said court of primary jurisdiction were commenced in the above entitled court, in the above entitled case, and are now pending by refer-

ence, before Burton J. Wyman, a Referee in Bankruptcy of the above entitled court. On January 5, 1946, Paul W. Sampsell, L. Boteler and Stewart McKee, all of Los Angeles, were qualified as Trustees in Bankruptcy of the estate, and ever since have been, and now are acting as such.

One of the assets of the bankrupt estate was a sawmill located near Willits, Mendocino County, California, commonly referred to as the "Willits Sawmill". Real and personal property was involved in the sawmill. The real estate, and a portion of the personal property, were subject to conditional sales contracts upon which balances were due. Theodore M. Monell, an attorney of San Francisco, represented DeLancey B. Lewis, and Doris B. Lewis, [96] his wife, who held a conditional sales contract on the real estate, and West Coast Redwood Corporation, a corporation, which held a conditional sales contract upon a portion of the equipment. Attachment and execution liens had been levied upon a portion of the personal property after the commencement of bankruptcy without the permission of the bankruptcy court. The Trustees filed a petition for the determination of these matters and a petition for an order of sale of the property. Mr. Monell filed an answer to these petitions on behalf of his clients. Also on behalf of his clients, he filed a petition in reclamation of the property covered by the said conditional sales contracts, to which the Trustees filed an answer.

The issues raised by these pleadings were heard

before Referee Wyman on April 15, 1946, at his courtroom in San Francisco. At the conclusion of the hearing on that day he announced his decision. This was to the effect that the Trustees in Bankruptcy should either sell the property prior to June 1, 1946, and pay off these balances due on conditional sales contracts, or return the property to the holders thereof, and that the Trustees should pay out of the bankrupt estate to Mr. Monell, as attorney for the holders of these contracts, the sum of \$2500.00 as attorney's fees pursuant to the terms of the contracts, instead of \$3500.00 as requested by him. The referee directed that counsel prepare and submit to him a formal written order to that effect, approved by all counsel involved. Other matters were to be taken care of in the written order, but they do not concern us here.

On or about April 18, 1946, immediately upon my return to Los Angeles, I communicated orally to the Trustees in Bankruptcy the said directions of the referee. They then stated to me that they were satisfied with all portions of the order, except that portion awarding attorney's fees in the sum of \$2500.00 to Mr. Monell, and that they considered such an award unreasonable and [97] excessive and desired me, on their behalf, to file with the referee and prosecute to a final conclusion, their petition to review such portion of the order awarding such attorney's fees. Their instructions to me in this respect have never been altered, modified, or abrogated. On or about June 1, 1946, I prepared on their behalf, such a petition to review, which they

signed and verified and which was filed with Referee Wyman on or about June 6, 1946. Later the Referee filed herein his certificate on review. The hearing of the review came up before the above entitled court on July 29, 1946, Judge St. Sure presiding in the absence of Judge Roche, and an order was made whereby the Trustees file their opening brief, Mr. Monell was given 20 days thereafter in which to file an answering brief, and the Trustees were given ten days thereafter in which to file a reply brief, the review then to stand submitted for decision.

Shortly after April 18, 1946, and after I had received such instructions to review the award of counsel fees, I prepared a proposed draft of the Referee's order pursuant to his directions made April 15, 1946, and sent a copy thereof to Mr. Monell for his objections and suggestions. He wrote back to me that the form proposed was satisfactory to him. There were other counsel involved representing other clients, and I sent them the same proposed draft and invited their comments. It was not until sometime in May, 1946, that I completed my canvas of the counsel involved, and started to prepare the final draft. This final draft carries the following at the end, after the signature of the referee: "The foregoing order is hereby approved this day of April, 1946, Grainger & Hunt, by Reuben G. Hunt, Attorneys for Trustees in Bankruptcy". Then follows a similar approval by the other counsel involved, including Theodore M. Monell. This final draft was signed, filed and entered

by Referee Wyman on May 27th, 1946. The petition for review of that part of the order awarding attorney's fees was [98] filed within ten days thereafter, as required by Sec. 39c of the Bankruptcy Act. The preliminary draft of the order carried with it a form for approval as of an unnamed date in April, 1946, but owing to unavoidable delay, the approval was not signed by all counsel until after the middle of May, 1946, and by myself last, although no one corrected the date of the approval.

When I prepared the preliminary draft, and the final draft, of the order, and when I signed the final draft on behalf of the Trustees in Bankruptcy, I did not have in mind, nor did I intend to approve in substance on their behalf, the award of the attorney's fees to Mr. Monell, or to consent to the award on their behalf or to waive on their behalf, their right to a review by the judge of that portion of the order awarding attorney's fees. My sole intention in preparing the approval in the form I did, and in signing the approval as prepared, was to signify only that I was satisfied that the order reflected the referee's directions as announced by him on April 15, 1946, at the time of the hearing. I never at any time, either at the time of signing the said approval, or otherwise, had any intention of consenting, on behalf of the Trustees, to the award of attorney's fees in the sum of \$2500.00, or any other amount, to Mr. Monell, or of waiving, on behalf of the Trustees, their right to have such award reviewed by the judge. My instructions from the Trustees, as I have stated above, were directly

to the contrary. There were never any discussions between myself and Mr. Monell concerning whether or not the Trustees objected to or consented to the award, or waived the right to appeal. Such matters were never mentioned between us. The failure, if any, of the form of said approval to express my intentions as above outlined, is due to my mistake, inadvertence and excusable neglect.

After the hearing before Judge St. Sure on July 29, 1946, Mr. Monell intimated to me that he regarded the said approval on my part as a bonding consent on the part of the Trustees [99] to the award of attorney's fees made to him, and a binding waiver of the right to review the award. I then told him that I never had any such intention in signing the approval, and that the Trustees had, from the beginning, instructed me to have the award reviewed. That was the first time I became aware of any such contention on his part. I immediately notified the Trustees of such contention, and they thereupon instructed me to present to the court for its consideration a motion for an order clarifying the approval and directing that such approval be disregarded on the review, and the petition for review prosecuted to a final determination.

The clarification of said approval to mean that is only an approval as to form, and is not a consent to the award of attorney's fees, and is not a waiver of the right to have such award reviewed by a judge of this court, will not prejudice Mr. Monell in any way, or do him an injustice, since the award

stands and he will receive the amount allowed by the Referee, unless reversed or modified by the judge.

/s/ REUBEN G. HUNT,
Affiant.

Subscribed and sworn to before me this 5th day of August, 1946.

[Seal] /s/ BESS A. ALDRICH,

Notary Public in and for the
County of Los Angeles,
State of California. [100]

AFFIDAVIT OF TRUSTEES IN BANKRUPTCY

State of California,
County of Los Angeles—ss.

Paul W. Sampsell, L. Boteler, and Stewart McKee, the Trustees in Bankruptcy of the estate of the above named corporation, being each duly sworn, each for himself, and not one for the other, deposes and says:

I have read the affidavit presented herein by Reuben G. Hunt, of the Law Firm of Grainger & Hunt, one of our counsel, in connection with our motion to clarify and have disregarded a certain approval to an order of Referee in Bankruptcy Wyman now on review, and am familiar with the contents of said affidavit. The said affidavit of Reuben G. Hunt is true to the best of my knowledge, information and belief.

I have always felt, and do now feel, that the Referee's award of attorney's fees to Theodore M. Monell was unreasonable and excessive, and that, in the interest of the creditors of the bankrupt estate, who are its beneficiaries, and whom we represent, the said award should be reviewed by a judge of this court to the end that justice will be done to all concerned, including the creditors of the estate who are its beneficiaries and for whom I am Trustee.

I have never consented to such award, or to the entry of a judgment for the amount awarded by the Referee, or any other amount, nor have I ever waived the right to have said award review by a judge of this court. I have never instructed our counsel, Reuben G. Hunt, to give any such consent or make any such waiver on behalf of the Trustees. If the approval signed by our counsel be construed to mean a consent to such award, or a waiver of the right to review, or both, then such approval is hereby repudiated and rejected. The fact of such approval was never brought to my attention until the date of this affidavit. [101]

I make this affidavit as a Trustee in Bankruptcy of the estate of the above named corporation.

/s/ PAUL W. SAMPSELL,

/s/ L. BOTELER,

/s/ STEWART McKEE,

Trustees in Bankruptcy of Christ's Church of the
Golden Rule, a corporation, Bankrupt.

Subscribed and sworn to before me this 5th day of August, 1946.

[Seal] /s/ BESS A. ALDRICH,

Notary Public in and for the
County of Los Angeles,
State of California.

[Endorsed]: Filed Aug. 8, 1946. C. W. Calbreath, Clerk. [102]

[Title of District Court and Cause.]

CONSENT TO ORDER CLARIFYING APPROVAL OF ORDER AND MOTION SUPPORTING REFEREE'S ORDER FIXING ATTORNEY'S FEE RE DENTON-JAMES SAWMILL

There is presently pending before this Court a petition for an order to clarify the approval by counsel of the order which is here sought to be reviewed. In brief it is probably sufficient to state that counsel for the trustees in preparing the order sought to be reviewed had added an approval by the various interested attorneys. Such approval might well be considered an approval of the amount of the fee allowed to the attorney for West Coast Redwood Corporation, DeLancey Lewis and his wife, and thus render moot the question presented for review. Counsel for the trustees seeks to limit his approval and that of all interested counsel to the form only of the order and not its substance. The writer is the only person who would be affected

by the suggested clarification, as it is his fee which is sought to be reduced. The writer states that although he considered the approval [103] to have been given by all parties as to substance as well as form, he gladly consents to the proposed clarification to permit this Honorable Court to consider the matter of the fee allowed on its merits. Thus any embarrassment to counsel for the trustees will be obviated. The writer feels his position is now justifiable for his clients have in the last few days received all of the proceeds of the sale, including interest, to which they were entitled under the proceedings instituted by them.

Accordingly, there is only left for the determination by this Honorable Court the reasonableness of the fee of \$2500 awarded by the Referee to the writer for his services.

In considering the question presented we feel that it is so clearly a matter within the discretion of the Court that the citation of authorities upon the proposition is unnecessary, for the basis of fees is one clearly within the knowledge of the Court and it is conceded that the authorities have unanimously decided that a Court may award fees based upon his knowledge and general experience. This Court is, of course, very amply qualified in this respect.

It is therefore proper to examine the record to analyze the service performed and the decision of the Referee. First, there was a lengthy petition in reclamation filed in behalf of West Coast Red-

wood Corporation covering the mill equipment, etc., and on behalf of DeLancey Lewis and his wife covering the real property and improvements, both claimants appearing by one petition. The amount involved was in excess of \$31,000, plus interest. Next, a simple answer to the trustees' petition for an order of sale was prepared and filed. An order to show cause was issued in connection with the reclamation petition, and a hearing was held and numerous conferences were had. It is to be noted that the period of time consumed commenced from the default of the [104] vendees in October 1945 and extended through the time of the hearing in April 1946 and thereafter. This period may not be ignored in considering the time and effort devoted to protecting the rights of the writer's clients herein. Also, it would be noted that the proceeding was entirely successful, and although realization and collection of the amounts due was delayed until September 12, nevertheless the claimants recovered interest to the time of payment as well as principal due.

Counsel for the trustees points out the simplicity of the situation. This contention, however, is belied by his opposition to the certificate and report of the Referee below. This report states that the claimants had the absolute right to the property in view of the terms of the executed contracts; counsel for the trustees objects vehemently to this statement, claiming otherwise under different decisions. These are matters which the writer had to determine before proceeding. It might be stated that serious

consideration was given to the alternative situations presented, and the writer deemed it expedient to file the claim as presented, with the result that his clients have collected in full over \$32,000 under their agreements. It was appreciated that a different procedure might have been followed, but the speculative possibilities of facing complex litigation and also a change in market conditions later on should such litigation be unsuccessful were outweighed by the prospects of a speedy adjustment and collection of cash immediately.

We find further disagreement between counsel and the Referee, also belying the simplicity of the problem presented, in the measurement of the fee itself. The Referee stated that he based same partially upon the recovery to the bankrupt of a net asset to which it otherwise would not have been entitled. Counsel for the trustees states that the fee should be measured by the [105] benefit to the particular clients of the writer. With this contention we agree, inasmuch as the contracts provided for reasonable fees to be allowed in any action or proceeding by either party to enforce any of the terms of the agreements. We feel that the proper basis of the allowance is the services rendered to the claimants who were, after all, the clients of the writer.

The petition prayed for a total fee of \$3500 and the Referee, without any discussion and upon the simple submission of the matter (see page 13 of the certificate of Referee), allowed a fee of \$2500.

There was no objection thereto or even slight suggestion of opposition to this amount at that time. We feel that an allowance of \$2500 on a total collection of over \$32,000, slightly under 8% is a very modest charge to be allowed on a matter of such importance. Counsel for the trustees makes much of the simplicity of the matter presented. It must not be overlooked that this simplicity was created by the fact that no objections could be interposed to claimants' petition. Had claimants been improperly or inadequately represented, a different situation would naturally have been presented. The writer feels, in all modesty, that his experience in over twenty-five years of practice added at least partially to the success of the proceeding and to the fact that the matter was amicably adjudicated. The authorities cited by counsel for the trustees, as well as by the Referee in his certificate, clearly hold that the amount involved and results achieved should be considered in fixing fees in these matters. It is clear that the Referee had a complete grasp of the situation and his order is not being attacked on any basis of lack of integrity but purely because of a claimed abuse of discretion. We feel that the Referee's order was fair and reasonable and should be sustained.

Respectfully submitted,

/s/ THEODORE M. MONELL.

[Endorsed]: Filed Sep. 16, 1946. C. W. Calbreath, Clerk. [106]

District Court of the United States, Northern
District of California, Southern Division

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday the 16th day of September, in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Michael J. Roche, District Judge.

No. 30217

In the Matter of

CHRIST'S CHURCH OF THE GOLDEN RULE,
Debtor.

ORDER GRANTING MOTION TO CLARIFY
REFEREE'S ORDER

This matter came on regularly this day for hearing on motion to clarify Referee's order. After hearing Reuben Hunt, Esq., attorney for trustee, and Theodore Monell, Esq., it is, by stipulation, Ordered that said motion be and the same is hereby granted. On motion of Mr. Hunt, Ordered that the petition for review of fee awarded Theodore Monell be submitted. [107]

[Title of District Court and Cause.]

The petition of Paul W. Sampsell, L. Boteler and Stewart McKee, Trustees for review of the Referee's order of May 27, 1946, insofar as said

order allowed to Theodore M. Monell counsel fees in the sum of \$2500.00, having been heretofore heard and submitted and being now fully considered, it is by the Court

Ordered that said order allowing counsel fees in the sum of \$2500.00 be and the same is hereby confirmed.

Dated: September 24th, 1946.

MICHAEL J. ROCHE,
U. S. District Judge.

[Endorsed]: Filed Sept. 24, 1946. C. W. Calbreath, Clerk. [108]

In the Southern Division of the United States
District Court for the Northern District of
California.

No. 36,408-R
In Bankruptcy

In the Matter of
CHRIST'S CHURCH OF THE GOLDEN RULE,
a corporation,

Bankrupt.

NOTICE OF APPEAL

To Theodore M. Monell:

You will please hereby take notice that Paul W. Sampsell, L. Boteler and Stewart McKee, the trustees in bankruptcy of the estate of the above named corporation, hereby appeal to the United

States Circuit Court of Appeals for the Ninth Circuit from the order made and entered herein on September 24, 1946, confirming the order of Referee in Bankruptcy Burton J. Wyman, made and entered on May 27, 1946, allowing to Theodore M. Monell the sum of Twenty-Five Hundred (\$2500.00) Dollars as counsel fees.

Dated October 14, 1946.

/s/ PAUL W. SAMPSELL,

/s/ L. BOTELER,

/s/ STEWART McKEE,

Trustees in Bankruptcy.

IRVING M. WALKER,

GRAINGER AND HUNT,

By /s/ REUBEN G. HUNT,

Attorneys for Trustees in
Bankruptcy.

[Endorsed]: Filed Oct. 14, 1946. C. W. Calbreath, Clerk. [109]

[Title of District Court and Cause.]

CONCISE STATEMENT OF THE POINTS ON
WHICH THE TRUSTEES IN BANK-
RUPTCY INTEND TO RELY ON THE
APPEAL.

Paul W. Sampsell, L. Boteler and Stewart McKee, the Trustees in Bankruptcy of the Estate of the above-named corporation, present herewith their concise statement of points on which they intend

to rely on their appeal to the Circuit Court of Appeals for the Ninth Circuit from the order of the above entitled court made and entered herein on September 24, 1946, confirming an order of Referee in Bankruptcy Wyman made and entered on May 27, 1946, awarding counsel fees in the sum of \$2500.00 to Theodore M. Monell, as follows:

1. The award was made pursuant to the terms of two conditional sales contracts entered into with the bankrupt corporation prior to bankruptcy, which provided for a "reasonable fee" to be paid to the counsel for the holders of the contracts. Mr. Monell was such counsel, but the award made to him by the Referee, and confirmed by the District Court, was unreasonable and excessive, in view of the nature of the services performed, and was an abuse of the discretion vested in such matters in the Referee and the [110] District Judge.

2. The award made by the Referee, confirmed by the District Judge, was based upon the premise that the Trustees in Bankruptcy were without legal rights under said conditional sales contracts in connection with the properties covered thereby, and Theodore M. Monell benefited the bankrupt estate by cooperation and non-insistence upon the enforcement of his clients' legal rights to take back the property because of default, whereas, under the California law, which federal courts will follow in matters of this kind, the holders of the conditional sales contracts held title for security only to assure the payment of the purchase price, and the Trustees

in Bankruptcy, as successors to the bankrupt corporation, had the right to the possession and use of the property, subject only to the seller's remedies in case of default, and were, in a practical and a legal sense, the beneficial owners of the properties. The properties were in the actual possession of the bankruptcy court, through its officers the Trustees in Bankruptcy, and the bankruptcy court had ample power to protect the interests of the bankrupt estate therein, by restraining the holders of the contracts from taking any untoward action and by giving the Trustees a reasonable time in which, either to pay off the balance due under the contracts by sale or otherwise, or to return the properties to such holders. Any such co-operation or non-insistence on the part of Mr. Monell did not contribute to the bankrupt estate anything the Trustees did not have the right to insist upon even in the face of opposition on his part.

3. The award made by the Referee, confirmed by the District Judge, was based upon the premise that the bankrupt estate, through the co-operation of Mr. Monell and his non-insistence upon the enforcement of his clients' legal rights to take back the property because of default, benefited to the extent of in excess of \$40,000.00, whereas the fact is that the only benefit the bankrupt [111] estate derived out of the transaction was the realization of an equity of some \$11,500.00, out of which is to be paid the fee finally awarded to Mr. Monell, and this equity was realized through the efforts of the counsel for the Trustees and such counsel are en-

titled to be paid a reasonable fee for their services out of such equity.

4. The award of \$2500.00 to Mr. Monell was unreasonable and excessive in that the record shows that the legal services performed by him were simple in character, little time was spent, were only those required to establish admitted claims in court by appropriate pleadings without contest. No litigation or controversy was involved, claims of such clients being conceded without contest. The reasonable value of such services is not to exceed \$500.00.

5. The Referee, and the District Judge, erred in basing the award upon the benefit principle to the bankrupt estate. The award should have been based upon the benefit to Mr. Monell's clients, the value of his services to them, so that they would not be required to pay themselves. Such was the purpose of the provisions in the conditional sales contracts providing for such counsel fees. The reasonable value of the services of Mr. Monell to his clients was not in excess of \$500.00, since such services were simple in character, did not require much time, were only those required to establish admitted claims in court by appropriate pleadings, no litigation or controversy was involved, and the money claims of such clients were conceded without contest and provided for by the court. The reasonable value of such services to said clients is not in excess of \$500.00.

6. The Referee and the District Judge erred in giving very large weight, in fixing the fee, to the

amount involved for Mr. Monell's clients, viz., some \$30,000.00, whereas other factors should have been given equal weight, such as the facts that little [112] time was spent, no litigation or controversy was involved, and the services performed were only those required to establish admitted claims in court by appropriate pleadings without contest. Taking into consideration all these factors, the reasonable value of Mr. Monell's services is not to exceed \$500.00.

Dated: October 14, 1946.

IRVING M. WALKER,
GRAINGER & HUNT,

By /s/ REUBEN G. HUNT,

Attorneys for Trustees in
Bankruptcy.

[Endorsed]: Filed Oct. 14, 1946. C. W. Calbreath, Clerk. [113]

In the Circuit Court of Appeals for the Ninth
Circuit

[Title of Cause.]

CONCISE STATEMENT OF POINTS ON
APPEAL AND DESIGNATION OF RECORD
NECESSARY FOR CONSIDERATION
THEREOF AND TO BE PRINTED.

For their concise statement of points on appeal on which the appellants intend to rely, the appellants adopt the Statement of Points heretofore filed

with the Clerk of the United States District Court for the Southern Division of the Northern District of California, and designate the same as their assignments of error.

The appellants hereby designate the entire record on appeal certified by the Clerk of the said District Court as necessary for the consideration of the appeal and to be printed. This particular document is to be printed as part of the record, in addition to those items already designated. All filing stamps shall appear in the printed record, but the titles of court and cause, and the names and addresses of attorneys appearing above the captions shall be omitted in printing.

Dated: October 14, 1946.

IRVING M. WALKER,

GRAINGER & HUNT,

By /s/ REUBEN G. HUNT,

Attorneys for Appellants.

Filed: Oct. 14, 1946,

C. W. CALBREATH,

Clerk. [114]

In the Southern Division of the United States
District Court for the Northern District of
California.

No. 36,408-R
In Bankruptcy

In the Matter of
CHRIST'S CHURCH OF THE GOLDEN RULE,
a corporation,

Bankrupt.

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

To Theodore M. Monell:

You are hereby notified that the following is a designation of the portions of the record, proceedings and evidence to be considered in the record on appeal by the trustees in bankruptcy herein to the Circuit Court of Appeals for the Ninth Circuit from that certain order of the above entitled court made and entered herein September 24, 1946, confirming the order of Referee in Bankruptcy, Burton J. Wyman, made and entered May 27, 1946, allowing to Theodore M. Monell counsel fees in the sum of Twenty-five Hundred Dollars (\$2500.00):

1. Certificate of Clerk of the United States District Court, Central Division of the Southern District of California, filed herein.

2. Order of Adjudication made and entered by the United States District Court for the Central

Division of the Southern District of California, filed herein.

3. Order of the United States District Court for the Central Division of the Southern District of California approving the trustees' bond, filed herein.

4. Order of the above-entitled court made and entered May 26, 1946, authorizing ancillary proceedings in the above entitled case and referring the administration of the ancillary estate to Burton J. Wyman, a Referee in Bankruptcy.

5. Petition of the trustees in bankruptcy for an order of sale of the Denton-James (Willits) sawmill, filed with Referee Wyman.

6. Order to show cause issued by Referee Wyman upon the filing of said petition.

7. Petition in reclamation filed with Referee Wyman by De Lancey Lewis and Doris B. Lewis, his wife, and West Coast Redwood Corporation, a corporation.

8. Order to show cause issued by Referee Wyman upon the filing of the said petition of reclamation.

9. Answer of trustees in bankruptcy to petition in reclamation of De Lancey Lewis et al, filed with Referee Wyman.

10. Answer of West Coast Redwood Corporation, a corporation, De Lancey Lewis and Doris B. Lewis, to the trustees' petition for an order of sale of the Denton-James (Willits) sawmill, filed with Referee Wyman.

11. Trustees' return of sale of real and personal property, filed with Referee Wyman.

12. Stipulation re Willits sawmill, filed with Referee Wyman.

13. Order of Referee Wyman clearing title and determining amounts due under liens and sale.

14. Petition of trustees for review of Referee's order by the Judge, filed with Referee Wyman.

15. Referee Wyman's certificate on review pursuant to such petition.

16. Letter dated September 16, 1946, from Reuben G. Hunt, attorney for Trustees in Bankruptcy, to Judge Michael J. Roche of the above entitled court.

17. Order of District Judge made and entered September 24, 1946, confirming order of Referee Wyman and awarding \$2500.00 counsel fees to Theodore M. Monell.

18. Trustees' notice of appeal.

19. Trustees' statement of points on which they intend to rely on appeal.

20. This designation of the record to be used on appeal.

Dated: October 14, 1946.

IRVING M. WALKER,
GRAINGER AND HUNT,

By /s/ REUBEN G. HUNT,
Attorneys for Trustees.

[Endorsed]: Filed Oct. 14, 1946. C. W. Calbreath, Clerk. [116]

[Title of District Court and Cause.]

AMENDMENT TO DESIGNATION OF
CONTENTS OF RECORD ON APPEAL

To Theodore M. Monell:

You Are Hereby Notified that this is an amendment to the designation of the portions of the record, proceedings and evidence to be considered in the record on appeal by the Trustees in Bankruptcy herein to the Circuit Court of Appeals for the Ninth Circuit heretofore filed herein, from that certain order of the above entitled court made and entered herein Sept. 24, 1946, confirming the order of Referee in Bankruptcy Burton J. Wyman made and entered May 27, 1946, allowing to Theodore M. Monell counsel fees in the sum of \$2500.00, setting up three additional portions of the record to be included which were inadvertently omitted from the original designation:

15-a. Notice of motion for order clarifying approval contained in Referee's order now on review and directing that such approval be disregarded on the review.

15-b. Consent to order clarifying approval of order and motion supporting Referee's order fixing attorney's fee re Denton-James Sawmill.

15-c. Minute order of Court, Sept. 16, 1946, granting the above motion so consented to.

Dated: Oct. 14, 1946.

IRVING M. WALKER,
GRAINGER & HUNT,
By /s/ REUBEN G. HUNT,
Attorneys for Trustees.

[Endorsed]: Filed Oct. 14, 1946. C. W. Calbreath, Clerk. [117]

In the District Court of the United States, Southern
District of California, Central Division

No. 44,128-WM
In Bankruptcy

In the Matter of
CHRIST'S CHURCH OF THE GOLDEN RULE,
a Corporation,

Bankrupt.

CERTIFICATE OF CLERK

I, the undersigned, Edmund L. Smith, Clerk of the above-entitled Court, hereby certify as follows:

On November 1, 1945, the above-entitled corporation filed herein its original Petition for an arrangement with its creditors under the provision of Chapter XI of the National Bankruptcy Act of 1898, as amended; and thereafter, and in the said proceeding, on November 15, 1945, filed its Petition for adjudication as an ordinary bankrupt, and thereafter and on November 19, 1945, the said corporation was duly adjudicated a bankrupt upon said

Petition so filed November 15, 1945, and further proceedings in the case were referred to Benno M. Brink, a Referee in Bankruptcy of the Court, and such proceedings are now pending in said Court.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of the above-entitled Court this 26th day of February, 1946.

[Seal] EDMUND L. SMITH,
Clerk.

By /s/ WM. E. COOK,
Deputy Clerk.

[Endorsed]: Filed Oct. 14, 1946. C. W. Calbreath, Clerk. [118]

[Title of District Court and Cause.]

ORDERS OF ADJUDICATION AND GENERAL REFERENCE

At Los Angeles, in said District, on November 19, 1945,

The respective petitions of each of the petitioners in the proceedings hereinafter mentioned, filed on the respective dates hereinafter indicated, that he be adjudged a bankrupt under the Act of Congress relating to bankruptcy, having been heard and duly considered; and

It having been adjudged that each of said petitioners is a bankrupt under the Act of Congress relating to bankruptcy; and

It is thereupon ordered that said proceedings be, and they hereby are, referred generally to the referees in bankruptcy of this Court, whose names appear opposite the respective proceedings herein-after mentioned, to take such further proceedings therein as are required and permitted by said Act, and that each of the said bankrupts shall henceforth attend before said referee and submit to such orders as may be made by him or by a Judge of this Court relating to said bankruptcy.

Number: 44,128-WM.

Title of Proceedings: Christ's Church of the Golden Rule, a Corporation.

Filed: 11-15-45.

Referee: Benno M. Brink, Esq., Los Angeles, Calif.

[Endorsed]: Filed Nov. 19, 1945.

[Seal] WM. C. MATHE'S,
U. S. District Judge.

A true copy, attest, etc., Mar. 19, 1946.

EDMUND L. SMITH,
Clerk.

By /s/ R. BETZ,
Deputy.

[Endorsed]: Filed Oct. 14, 1946.

C. W. CALBREATH,
Clerk. [119]

[Title of District Court and Cause.]

CERTIFIED COPY OF ORDER APPROVING
TRUSTEES' BOND

At a Court of Bankruptcy, held in and for the Southern District of California at Los Angeles this 5th day of January, A.D. 1946.

Before Benno M. Brink, Referee in Bankruptcy.

It appearing to the Court that Paul W. Sampsell, L. Boteler and Stewart McKee of Los Angeles and in said District have been duly appointed Trustees of the estate of the above named Bankrupt, and have given a bond with sureties for the faithful performance of their official duties, in the amount fixed by the creditors (or by order of the Court), to wit in the sum of One Hundred Fifty Thousand and no/100 (\$150,000.00) Dollars, It Is Ordered that the said bond be, and the same is hereby approved.

BENNO M. BRINK,

Referee in Bankruptcy.

[Endorsed]: Filed Jan. 5, 1946, at 31 minutes past 9 o'clock a.m. Benno M. Brink, Referee, Florence Robinson, Clerk.

United States of America,
Southern District of California,
Central Division—ss.

I do hereby certify that the within instrument is a true and correct copy of the original thereof as the same appears of record in my office.

In witness whereof, I hereunto set my hand this
7th day of Jan., 1946.

/s/ BENNO M. BRINK,

Referee in Bankruptcy.

[Endorsed]: Filed Oct. 14, 1946. C. W. Calbreath, Clerk. [120]

In the Southern Division of the United States
District Court for the Northern District of
California

No. 36,408-R
In Bankruptcy

In the Matter of
CHRIST'S CHURCH OF THE GOLDEN RULE,
a Corporation,

Bankrupt.

WAIVER OF RIGHT TO DESIGNATE FURTHER PORTIONS OF RECORD ON APPEAL

The undersigned attorney for respondent in the above matter, being the appeal by the trustees in bankruptcy herein to the Circuit Court of Appeals for the Ninth Circuit from that certain order of the above entitled court duly given, made and entered herein on September 24, 1946, confirming the order of referee in bankruptcy allowing counsel fees, hereby adopts the designation of contents of record on appeal and amendment to designation of contents of record on appeal as filed herein by Irving M. Walker and Grainger and Hunt, attor-

neys for the trustees, as the record on appeal in the above matter for respondent, and waives the right to designate any further portions of the record to be considered on said appeal.

Dated: October 15, 1946.

/s/ THEODORE M. MONELL,
Attorney for Respondent.

[Endorsed]: Filed Oct. 15, 1946. C. W. Calbreath, Clerk. [121]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 121 pages, numbered from 1 to 121, inclusive, contain a full, true, and correct transcript of the records and proceedings in the matter of Christ's Church of the Golden Rule, a Corporation, Bankrupt, No. 36408-R, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$15.40 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this day of October, A.D. 1946.

C. W. CALBREATH,
Clerk. [122]

[Endorsed]: No. 11458. United States Circuit Court of Appeals for the Ninth Circuit. Paul W. Sampsell, L. Boteler and Stewart McKee, Trustees of the Estate of Christ's Church of the Golden Rule, a Corporation, Bankrupt, Appellants, vs. Theodore M. Monell, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed October 28, 1946.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

